BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Petition Nos. IV-2023-1 & IV-2023-3

In the Matter of

Plains Marketing LP, Mobile Terminal at Magazine Point
Permit No. 503-3013

Alabama Bulk Terminal Company LLC, Blakeley Island Terminal
Permit No. 503-3035

Kimberly-Clark Corporation, Mobile Operations
Permit No. 503-2012

Epic Alabama Maritime Assets LLC, Alabama Shipyard LLC
Permit No. 503-6001

and

UOP LLC, Mobile Plant
Permit No. 503-8010

Issued by the Alabama Department of Environmental Management

ORDER GRANTING IN PART AND DENYING IN PART PETITIONS FOR OBJECTION TO TITLE V OPERATING PERMITS

I. INTRODUCTION

The U.S. Environmental Protection Agency (EPA) received two petitions on January 4, 2023 (the January 4 Petition) and January 9, 2023 (the January 9 Petition) from the Greater-Birmingham Alliance to Stop Pollution (GASP), Mobile Environmental Justice Action Coalition, Clean Healthy Educated Safe Sustainable Africatown, and Mobile Alabama NAACP Unit #5044 Environmental and Climate Justice Committee (the Petitioners), pursuant to section 505(b)(2) of the Clean Air Act (CAA or Act), 42 United States Code (U.S.C.) § 7661d(b)(2). Each Petition requests that the EPA Administrator object to the following five operating permits issued by the Alabama Department of Environmental Management (ADEM) to facilities in Mobile County, Alabama: operating permit No. 503-3013 issued to the Plains Marketing LP Mobile Terminal at Magazine Point (Plains Marketing), operating permit No. 503-3035 issued to the Alabama Bulk Terminal Company LLC Blakeley Island Terminal (AL Bulk Terminal), operating permit No. 503-2012 issued to the Kimberly-Clark Corporation Mobile Operations (Kimberly-Clark),

operating permit No. 503-6001 issued to the Epic Alabama Maritime Assets LLC Alabama Shipyard LLC (Alabama Shipyard), and operating permit No. 503-8010 issued to the UOP LLC Mobile Plant (UOP) (collectively, the Permits). The Permits were issued pursuant to title V of the CAA, 42 U.S.C. §§ 7661–7661f, and Chapter 355-3-16 of the Alabama Administrative Code. *See also* 40 Code of Federal Regulations (C.F.R.) part 70 (title V implementing regulations). This type of operating permit is also known as a title V permit or part 70 permit.

Based on a review of the Petitions and other relevant materials, including the Permits, the permit records, and relevant statutory and regulatory authorities, and as explained in Section IV of this Order, EPA grants in part and denies in part the Petitions requesting that the EPA Administrator object to the Permits. Specifically, EPA grants Claim 5 pertaining to Kimberly-Clark and Claims 8, 9.a, and 9.c pertaining to Alabama Shipyard of the January 9 Petition and denies the rest of the claims. EPA also finds that cause exists to reopen and revise the AL Bulk Terminal Final Permit.

II. STATUTORY AND REGULATORY FRAMEWORK

A. Title V Permits

Section 502(d)(1) of the CAA, 42 U.S.C. § 766la(d)(1), requires each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA and EPA's implementing regulations at 40 C.F.R. part 70. The EPA granted interim approval of ADEM's title V operating permit program in 1995, 60 Fed. Reg. 57346 (November 15, 1995), and the EPA granted full approval of ADEM's title V program in 2001. 66 Fed. Reg. 54444 (October 29, 2001). This program, which became effective on November 28, 2001, is codified in Chapter 335-1-7 ("Operating Permit Fees") and Chapter 335-3-16 ("Operating Permit Regulations for Major Sources") of the Alabama Administrative Code.

All major stationary sources of air pollution and certain other sources are required to apply for and operate in accordance with title V operating permits that include emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA, including the requirements of the applicable implementation plan. 42 U.S.C. §§ 7661a(a), 7661b, 7661c(a). The title V operating permit program generally does not impose new substantive air quality control requirements, but does require permits to contain adequate monitoring, recordkeeping, reporting, and other requirements to assure compliance with applicable requirements. 57 Fed. Reg. 32250, 32251 (July 21, 1992); *see* 42 U.S.C. § 7661c(c). One purpose of the title V program is to "enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements." 57 Fed. Reg. at 32251. Thus, the title V operating permit program is a vehicle for compiling the air quality control requirements as they apply to the source's emission units and for providing adequate monitoring, recordkeeping, and reporting to assure compliance with such requirements.

B. Review of Issues in a Petition

State and local permitting authorities issue title V permits pursuant to their EPA-approved title V programs. Under CAA § 505(a) and the relevant implementing regulations found at 40 C.F.R.

§ 70.8(a), states are required to submit each proposed title V operating permit to EPA for review. 42 U.S.C. § 7661d(a). Upon receipt of a proposed permit, EPA has 45 days to object to final issuance of the proposed permit if EPA determines that the proposed permit is not in compliance with applicable requirements under the Act. 42 U.S.C. § 7661d(b)(1); *see also* 40 C.F.R. § 70.8(c). If EPA does not object to a permit on its own initiative, any person may, within 60 days of the expiration of EPA's 45-day review period, petition the Administrator to object to the permit. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Each petition must identify the proposed permit on which the petition is based and identify the petition claims. 40 C.F.R. § 70.12(a). Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R. § 70.12(a)(2). Any arguments or claims the petitioner wishes EPA to consider in support of each issue raised must generally be contained within the body of the petition.[1] *Id.*

The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting authority (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); *see also* 40 C.F.R. § 70.12(a)(2)(v).

In response to such a petition, the Act requires the Administrator to issue an objection if a petitioner demonstrates that a permit is not in compliance with the requirements of the Act. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(c)(1).[2] Under section 505(b)(2) of the Act, the burden is on the petitioner to make the required demonstration to EPA.[3] The petitioner's demonstration burden is a critical component of CAA § 505(b)(2). As courts have recognized, CAA § 505(b)(2) contains both a "discretionary component," under which the Administrator determines whether a petition demonstrates that a permit is not in compliance with the requirements of the Act, and a nondiscretionary duty on the Administrator's part to object where such a demonstration is made. *Sierra Club v. Johnson*, 541 F.3d at 1265–66 ("[I]t is undeniable [that CAA § 505(b)(2)] also contains a discretionary component: it requires the Administrator to make a judgment of whether a petition demonstrates a permit does not comply with clean air requirements."); *NYPIRG*, 321 F.3d at 333. Courts have also made clear that the Administrator is only obligated to grant a petition to object under CAA § 505(b)(2) if the Administrator determines that the petitioner has demonstrated that the permit is not in compliance with requirements of the Act. *Citizens Against Ruining the Environment*, 535 F.3d at 677 (stating that § 505(b)(2) "clearly obligates the Administrator to (1) determine whether the petition demonstrates noncompliance and (2) object

[1] If reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. *Id*.

[2] *See also New York Public Interest Research Group, Inc. v. Whitman*, 321 F.3d 316, 333 n.11 (2d Cir. 2003) (*NYPIRG*).

[3] *WildEarth Guardians v. EPA*, 728 F.3d 1075, 1081–82 (10th Cir. 2013); *MacClarence v. EPA*, 596 F.3d 1123, 1130–33 (9th Cir. 2010); *Sierra Club v. EPA*, 557 F.3d 401, 405–07 (6th Cir. 2009); *Sierra Club v. Johnson*, 541 F.3d 1257, 1266–67 (11th Cir. 2008); *Citizens Against Ruining the Environment v. EPA*, 535 F.3d 670, 677–78 (7th Cir. 2008); *cf. NYPIRG*, 321 F.3d at 333 n.11.

if such a demonstration is made" (emphasis added)).[4] When courts have reviewed EPA's interpretation of the ambiguous term "demonstrates" and its determination as to whether the demonstration has been made, they have applied a deferential standard of review. *See, e.g.*, *MacClarence*, 596 F.3d at 1130–31.[5] Certain aspects of the petitioner's demonstration burden are discussed in the following paragraph. A more detailed discussion can be found in the preamble to EPA's proposed petitions rule. *See* 81 Fed. Reg. 57822, 57829–31 (August 24, 2016); *see also In the Matter of Consolidated Environmental Management, Inc., Nucor Steel Louisiana*, Order on Petition Nos. VI-2011-06 and VI-2012-07 at 4–7 (June 19, 2013) (*Nucor II Order*).

EPA considers a number of criteria in determining whether a petitioner has demonstrated noncompliance with the Act. *See generally Nucor II Order* at 7. For example, one such criterion is whether a petitioner has provided the relevant analyses and citations to support its claims. For each claim, the petitioner must identify (1) the specific grounds for an objection, citing to a specific permit term or condition where applicable; (2) the applicable requirement as defined in 40 C.F.R. § 70.2, or requirement under part 70, that is not met; and (3) an explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under part 70. 40 C.F.R. § 70.12(a)(2)(i)–(iii). If a petitioner does not identify these elements, EPA is left to work out the basis for the petitioner's objection, contrary to Congress's express allocation of the burden of demonstration to the petitioner in CAA § 505(b)(2). *See MacClarence*, 596 F.3d at 1131 ("[T]he Administrator's requirement that [a title V petitioner] support his allegations with legal reasoning, evidence, and references is reasonable and persuasive.").[6] Relatedly, EPA has pointed out in numerous previous orders that general assertions or allegations did not meet the demonstration standard. *See, e.g.*, *In the Matter of Luminant Generation Co., Sandow 5 Generating Plant*, Order on Petition Number VI-2011-05 at 9 (January 15, 2013).[7] Also, the failure to address a key element of a particular issue presents further grounds for EPA to determine that a petitioner has not demonstrated a flaw in the permit. *See, e.g.*, *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III-2012-06, III-2012-07, and III-2013-02 at 48 (July 30, 2014).[8]

Another factor EPA examines is whether the petitioner has addressed the state or local permitting authority's decision and reasoning contained in the permit record. 81 Fed. Reg. at 57832; *see*

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[4] *See also Sierra Club v. Johnson*, 541 F.3d at 1265 ("Congress's use of the word 'shall' . . . plainly mandates an objection *whenever* a petitioner demonstrates noncompliance." (emphasis added)).

[5] *See also Sierra Club v. Johnson*, 541 F.3d at 1265–66; *Citizens Against Ruining the Environment*, 535 F.3d at 678.

[6] *See also In the Matter of Murphy Oil USA, Inc.*, Order on Petition No. VI-2011-02 at 12 (September 21, 2011) (denying a title V petition claim where petitioners did not cite any specific applicable requirement that lacked required monitoring); *In the Matter of Portland Generating Station*, Order on Petition at 7 (June 20, 2007) (*Portland Generating Station Order*).

[7] *See also Portland Generating Station Order* at 7 ("[C]onclusory statements alone are insufficient to establish the applicability of [an applicable requirement]."); *In the Matter of BP Exploration (Alaska) Inc., Gathering Center #1*, Order on Petition Number VII-2004-02 at 8 (April 20, 2007); *In the Matter of Georgia Power Company*, Order on Petitions at 9–13 (January 8, 2007) (*Georgia Power Plants Order*); *In the Matter of Chevron Products Co., Richmond, Calif. Facility*, Order on Petition No. IX-2004–10 at 12, 24 (March 15, 2005).

[8] *See also In the Matter of Hu Honua Bioenergy*, Order on Petition No. IX-2011-1 at 19–20 (February 7, 2014); *Georgia Power Plants Order* at 10.

Voigt v. EPA, 46 F.4th 895, 901–02 (8th Cir. 2022); *MacClarence*, 596 F.3d at 1132–33.[9] This includes a requirement that petitioners address the permitting authority's final decision and final reasoning (including the state's response to comments) where these documents were available during the timeframe for filing the petition. 40 C.F.R. § 70.12(a)(2)(vi). Specifically, the petition must identify where the permitting authority responded to the public comment and explain how the permitting authority's response is inadequate to address (or does not address) the issue raised in the public comment. *Id*.

The information that EPA considers in determining whether to grant or deny a petition submitted under 40 C.F.R. § 70.8(d) generally includes, but is not limited to, the administrative record for the proposed permit and the petition, including attachments to the petition. 40 C.F.R. § 70.13. The administrative record for a particular proposed permit includes the draft and proposed permits; any permit applications that relate to the draft or proposed permits; the statement required by § 70.7(a)(5) (sometimes referred to as the 'statement of basis'); any comments the permitting authority received during the public participation process on the draft permit; the permitting authority's written responses to comments, including responses to all significant comments raised during the public participation process on the draft permit; and all materials available to the permitting authority that are relevant to the permitting decision and that the permitting authority made available to the public according to § 70.7(h)(2). *Id.* If a final permit and a statement of basis for the final permit are available during the agency's review of a petition on a proposed permit, those documents may also be considered when determining whether to grant or deny the petition. *Id*.

If EPA grants a title V petition, a permitting authority may address EPA's objection by, among other things, providing EPA with a revised permit. 42 U.S.C. § 7661d(b)(3), (c); 40 C.F.R. § 70.8(d); *see id*. § 70.7(g)(4); 70.8(c)(4); *see generally* 81 Fed. Reg. 57822, 57842 (August 24, 2016) (describing post-petition procedures); *Nucor II Order* at 14–15 (same). In some cases, the permitting authority's response to an EPA objection may not involve a revision to the permit terms and conditions themselves, but may instead involve revisions to the permit record. For example, when EPA has issued a title V objection on the ground that the permit record does not adequately support the permitting decision, it may be acceptable for the permitting authority to respond only by providing an additional rationale to support its permitting decision.

When the permitting authority revises a permit or permit record in order to resolve an EPA objection, it must go through the appropriate procedures for that revision. The permitting authority should determine whether its response is a minor modification or a significant modification to the title V permit, as described in 40 C.F.R. § 70.7(e)(2) and (4) or the corresponding regulations in the state's EPA-approved title V program. If the permitting

[9] *See also, e.g.*, *Finger Lakes Zero Waste Coalition v. EPA*, 734 Fed. App'x *11, *15 (2d Cir. 2018) (summary order); *In the Matter of Noranda Alumina, LLC*, Order on Petition No. VI-2011-04 at 20–21 (December 14, 2012) (denying a title V petition issue where petitioners did not respond to the state's explanation in response to comments or explain why the state erred or why the permit was deficient); *In the Matter of Kentucky Syngas, LLC*, Order on Petition No. IV-2010-9 at 41 (June 22, 2012) (*Kentucky Syngas Order*) (denying a title V petition issue where petitioners did not acknowledge or reply to the state's response to comments or provide a particularized rationale for why the state erred or the permit was deficient); *Georgia Power Plants Order* at 9–13 (denying a title V petition issue where petitioners did not address a potential defense that the state had pointed out in the response to comments).

authority determines that the modification is a significant modification, then the permitting authority must provide for notice and opportunity for public comment for the significant modification consistent with 40 C.F.R. § 70.7(h) or the state's corresponding regulations.

In any case, whether the permitting authority submits revised permit terms, a revised permit record, or other revisions to the permit, and regardless of the procedures used to make such revision, the permitting authority's response is generally treated as a new proposed permit for purposes of CAA § 505(b) and 40 C.F.R. § 70.8(c) and (d). *See Nucor II Order* at 14. As such, it would be subject to EPA's 45-day review per CAA § 505(b)(1) and 40 C.F.R. § 70.8(c), and an opportunity for the public to petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) if EPA does not object during its 45-day review period.

When a permitting authority responds to an EPA objection, it may choose to do so by modifying the permit terms or conditions or the permit record with respect to the specific deficiencies that EPA identified; permitting authorities need not address elements of the permit or the permit record that are unrelated to EPA's objection. As described in various title V petition orders, the scope of EPA's review (and accordingly, the appropriate scope of a petition) on such a response would be limited to the specific permit terms or conditions or elements of the permit record modified in that permit action. *See In The Matter of Hu Honua Bioenergy, LLC*, Order on Petition No. VI-2014-10 at 38–40 (September 14, 2016) (*Hu Honua II Order*); *In the Matter of WPSC, Weston*, Order on Petition No. V-2006-4 at 5–6, 10 (December 19, 2007).

C. New Source Review

The major New Source Review (NSR) program encompasses two core types of preconstruction permit requirements for major stationary sources. Part C of title I of the CAA establishes the Prevention of Significant Deterioration (PSD) program, which applies to new major stationary sources and major modifications of existing major stationary sources for pollutants for which an area is designated as attainment or unclassifiable for the national ambient air quality standards (NAAQS) and for other pollutants regulated under the CAA. 42 U.S.C. §§ 7470–7479. Part D of title I of the Act establishes the major nonattainment NSR (NNSR) program, which applies to new major stationary sources and major modifications of existing major stationary sources for those NAAQS pollutants for which an area is designated as nonattainment. 42 U.S.C. §§ 7501–7515. EPA has two largely identical sets of regulations implementing the PSD program. One set, found at 40 C.F.R. § 51.166, contains the requirements that state PSD programs must meet to be approved as part of a state implementation plan (SIP). The other set of regulations, found at 40 C.F.R. § 52.21, contains EPA's federal PSD program, which applies in areas without a SIP-approved PSD program. EPA's regulations specifying requirements for state NNSR programs are contained in 40 C.F.R. § 51.165.

While parts C and D of title I of the Act address the major NSR program for major sources, section 110(a)(2)(C) addresses the permitting program for new and modified minor sources and for minor modifications to major sources. EPA commonly refers to the latter program as the "minor NSR" program. States must also develop minor NSR programs to, along with the major source programs, attain and maintain the NAAQS. The federal requirements for state minor NSR programs are outlined in 40 C.F.R. §§ 51.160 through 51.164. These federal requirements for

minor NSR programs are less prescriptive than those for major sources, and, as a result, there is a larger variation of requirements in EPA-approved state minor NSR programs than in major source programs.

The EPA has approved Alabama's PSD, NNSR, and minor NSR programs as part of its SIP. See 40 C.F.R. § 52.50 (identifying EPA-approved regulations in the Alabama SIP. Alabama's major and minor NSR provisions, as incorporated into Alabama's EPA-approved SIP, are contained in portions of Alabama Administrative Code 335-3-14 and 335-3-15.

III. BACKGROUND

The January 4 Petition raises claims challenging various aspects of operating permits for five facilities located in a similar geographic area within Mobile County, Alabama. The January 9 Petition repeats all of the claims raised in the January 4 Petition and includes additional permit-specific claims addressing the Kimberly-Clark Final Permit, Alabama Shipyard Final Permit, and UOP Final Permit. Because these petitions cover substantially the same claims for five facilities in the same geographic area, EPA believes it promotes clarity and efficiency to answer them in this single Order.

A. The Plains Marketing Facility and Permitting History

The Plains Marketing Terminal, owned by Plains Marketing LP, is located at 101 Bay Bridge Road, Mobile, Alabama. The facility is a petroleum bulk storage and transfer terminal that receives, stores, and sends out crude oil, petroleum liquids, and ethanol via ships, barges, tank trucks, or pipeline. The facility is a major source under title V for volatile organic compounds (VOCs).

EPA conducted an analysis using EPA's EJScreen[10] to assess key demographic and environmental indicators within a 5-kilometer radius of the Plains Marketing facility. This analysis showed a total population of approximately 20,317 residents within a 5-kilometer radius of the facility, of which approximately 88 percent are people of color and 59 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Alabama.

EJ Index	Percentile in State
Particulate Matter 2.5	88
Ozone	70
Diesel Particulate Matter	95
Air Toxics Cancer Risk	82
Air Toxics Respiratory Hazard	86

[10] EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. *See https://www.epa.gov/ejscreen/what-ejscreen*.

Toxic Releases to Air	94
Traffic Proximity	91
Lead Paint	93
Superfund Proximity	86
RMP Facility Proximity	95
Hazardous Waste Proximity	96
Underground Storage Tanks	89
Wastewater Discharge	96

ADEM issued the initial title V permit for the Plains Marketing facility on November 17, 2000, which was subsequently renewed. The current action is the facility's fourth renewal permit. On April 29, 2020, Plains Marketing LP submitted an application for a renewal title V permit. ADEM published notice of a draft permit and statement of basis document on October 2, 2020, subject to a public comment period that was extended until March 4, 2021. On September 15, 2022, ADEM submitted a proposed permit, along with its responses to public comments (Plains Marketing RTC) and statement of basis document, to EPA for its 45-day review. EPA's 45-day review period ended on October 31, 2022, during which time EPA did not object to the proposed permit. ADEM issued the final title V renewal permit for the Plains Marketing facility (Plains Marketing Final Permit) with a final statement of basis document (Plains Marketing Final SOB) on November 4, 2022.

B. The AL Bulk Terminal Facility and Permitting History

The Blakeley Island Terminal, owned by the Alabama Bulk Terminal Company LLC, is located at 195 Cochrane Causeway, Mobile, Alabama. The facility is a bulk liquid storage and transfer terminal that receives, stores, and sends out petroleum, organic, and inorganic products via ships, barges, or tank trucks. The facility is a major source under title V for sulfur dioxide (SO_2) and VOCs and a synthetic minor source for hazardous air pollutants (HAPs).

EPA conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a 5-kilometer radius of the AL Bulk Terminal facility. This analysis showed a total population of approximately 22,857 residents within a 5-kilometer radius of the facility, of which approximately 70 percent are people of color and 48 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Alabama.

EJ Index	Percentile in State
Particulate Matter 2.5	82
Ozone	67
Diesel Particulate Matter	90
Air Toxics Cancer Risk	71
Air Toxics Respiratory Hazard	85
Toxic Releases to Air	87

Traffic Proximity	88
Lead Paint	86
Superfund Proximity	79
RMP Facility Proximity	89
Hazardous Waste Proximity	91
Underground Storage Tanks	84
Wastewater Discharge	88

ADEM issued the initial title V permit for the AL Bulk Terminal on October 18, 2000, which was subsequently renewed. The current action is the facility's fourth renewal permit. On April 7, 2021, the Alabama Bulk Terminal Company LLC submitted an application for a renewal title V permit. ADEM published notice of a draft permit on August 27, 2021, subject to a public comment period that was extended until October 28, 2021. On September 15, 2022, ADEM submitted a proposed permit, along with its responses to public comments (AL Bulk Terminal RTC) and statement of basis document, to EPA for its 45-day review. EPA's 45-day review period ended on October 31, 2022, during which time EPA did not object to the proposed permit. ADEM issued the final title V renewal permit for the AL Bulk Terminal (AL Bulk Terminal Final Permit) with a final statement of basis document (AL Bulk Terminal Final SOB) on November 4, 2022.

C. The Kimberly-Clark Facility and Permitting History

The Kimberly-Clark Mobile Operations, owned by the Kimberly-Clark Corporation, is located at 200 Bay Bridge Road, Mobile, Alabama. The facility is a tissue, towel, and napkin mill that produces those items from market pulp, recycled paper, and other Kimberly-Clark mills' parent rolls. The facility is a major source under title V for nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (filterable PM, PM_{10}, and $PM_{2.5}$), and VOCs.

EPA conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a 5-kilometer radius of the Kimberly-Clark facility. This analysis showed a total population of approximately 21,018 residents within a 5-kilometer radius of the facility, of which approximately 89 percent are people of color and 60 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Alabama.

EJ Index	Percentile in State
Particulate Matter 2.5	88
Ozone	70
Diesel Particulate Matter	95
Air Toxics Cancer Risk	81
Air Toxics Respiratory Hazard	84
Toxic Releases to Air	94
Traffic Proximity	92

Lead Paint	93
Superfund Proximity	86
RMP Facility Proximity	95
Hazardous Waste Proximity	96
Underground Storage Tanks	89
Wastewater Discharge	96

ADEM issued the initial title V permit for the Kimberly-Clark facility on January 4, 2004, which was subsequently renewed. The current action is the facility's third renewal permit. On November 9, 2020, the Kimberly-Clark Corporation submitted an application for a renewal title V permit. ADEM published notice of a draft permit on March 9, 2021, subject to a public comment period that ran until April 8, 2021. On September 22, 2022, ADEM submitted a proposed permit, along with its responses to public comments (Kimberly-Clark RTC) and statement of basis document, to EPA for its 45-day review. EPA's 45-day review period ended on November 7, 2022, during which time EPA did not object to the proposed permit. ADEM issued the final title V renewal permit for the Kimberly-Clark facility (Kimberly-Clark Final Permit) with a final statement of basis document (Kimberly-Clark Final SOB) on November 9, 2022.

D. The Alabama Shipyard Facility and Permitting History

The Alabama Shipyard, owned by Epic Alabama Maritime Assets LLC, is located at 660 Dunlap Drive, Mobile, Alabama. The facility is a shipyard that maintains, overhauls, repairs, converts, and disposes of ships. The facility is a major source under title V for PM, VOCs, and HAPs.

EPA conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a 5-kilometer radius of the Alabama Shipyard facility. This analysis showed a total population of approximately 22,733 residents within a 5-kilometer radius of the facility, of which approximately 73 percent are people of color and 52 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Alabama.

EJ Index	**Percentile in State**
Particulate Matter 2.5	83
Ozone	70
Diesel Particulate Matter	91
Air Toxics Cancer Risk	67
Air Toxics Respiratory Hazard	87
Toxic Releases to Air	88
Traffic Proximity	90
Lead Paint	88
Superfund Proximity	80
RMP Facility Proximity	90

Hazardous Waste Proximity	92
Underground Storage Tanks	86
Wastewater Discharge	85

ADEM issued the initial title V permit for the Alabama Shipyard on April 23, 2002, which was subsequently renewed. The current action is the facility's fourth renewal permit. On November 2, 2021, Epic Alabama Maritime Assets LLC submitted an application for a renewal title V permit. ADEM published notice of a draft permit on March 9, 2022, subject to a public comment period that ran until April 8, 2022. On September 22, 2022, ADEM submitted a proposed permit, along with its responses to public comments (Alabama Shipyard RTC) and statement of basis document, to EPA for its 45-day review. EPA's 45-day review period ended on November 7, 2022, during which time EPA did not object to the proposed permit. ADEM issued the final title V renewal permit for the Alabama Shipyard (Alabama Shipyard Final Permit) with a final statement of basis document (Alabama Shipyard Final SOB) on November 9, 2022.

E. The UOP Facility and Permitting History

The UOP Plant, owned by UOP LLC, is located at 1 Linde Drive, Chickasaw, Alabama. The facility is a chemical production plant that produces synthetic materials to be used as adsorbents and/or catalyst in various manufacturing applications. The facility is a major source under title V for particulate matter (PM and PM_{10}), CO, and NO_x.

EPA conducted an analysis using EPA's EJScreen to assess key demographic and environmental indicators within a 5-kilometer radius of the UOP facility. This analysis showed a total population of approximately 24,787 residents within a 5-kilometer radius of the facility, of which approximately 82 percent are people of color and 62 percent are low income. In addition, EPA reviewed the EJScreen Environmental Justice Indices, which combine certain demographic indicators with 13 environmental indicators. The following table identifies the Environmental Justice Indices for the 5-kilometer radius surrounding the facility and their associated percentiles when compared to the rest of the State of Alabama.

EJ Index	Percentile in State
Particulate Matter 2.5	87
Ozone	66
Diesel Particulate Matter	93
Air Toxics Cancer Risk	67
Air Toxics Respiratory Hazard	72
Toxic Releases to Air	93
Traffic Proximity	92
Lead Paint	91
Superfund Proximity	87
RMP Facility Proximity	93
Hazardous Waste Proximity	95
Underground Storage Tanks	89
Wastewater Discharge	92

ADEM issued UOP's initial title V permit on August 15, 2003, which was renewed in 2012. The current permitting action is a minor modification issued by ADEM in response to EPA's order (*In the Matter of UOP LLC*, Order on Petition No. IV-2021-6 (April 27, 2022) (*UOP Order*)) objecting to a renewal permit issued by ADEM on February 2, 2021 (the 2021 UOP Permit) in response to a petition filed by one of the current Petitioners—GASP—on April 2, 2021 (the 2021 UOP Petition). ADEM did not publish notice of a draft permit and did not hold a public comment period for the minor modification. On September 22, 2022, ADEM submitted a proposed permit containing the minor modification, along with its updated responses to public comments (UOP Updated RTC) and updated statement of basis document (UOP Updated SOB), to EPA for its 45-day review. EPA's 45-day review period ended on November 7, 2022, during which time EPA did not object to the proposed permit. ADEM issued the final title V renewal permit containing the minor modification for the UOP facility (UOP Final Permit) on November 8, 2022.

F. Timeliness of Petitions

Pursuant to the CAA, if EPA does not object to a proposed permit during its 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period to object. 42 U.S.C § 7661d(b)(2). EPA's 45-day review period for the Plains Marketing and Al Bulk Terminal permits expired on October 31, 2022. EPA's website indicated that any petitions seeking EPA's objection to the Plains Marketing or AL Bulk Terminal permits were due on or before January 3, 2023. EPA's 45-day review period for the Kimberly-Clark, Alabama Shipyard, and UOP permits expired on November 7, 2022. EPA's website indicated that any petitions seeking EPA's objection to the Kimberly-Clark, Alabama Shipyard, or UOP permits were due on or before January 9, 2023.

The two petitions were received January 4, 2023[11] and January 9, 2023. Each petition challenges various aspects of all five permits at issue. Neither the January 4 Petition nor the January 9

[11] EPA's regulations state the following: "In order for the EPA to be able to determine whether a petition was timely filed, the petition must have or be accompanied by one of the following: A date or time stamp of receipt through EPA's designated electronic submission system as described in § 70.14; a date or time stamp on an electronic submission through EPA's designated email address as described in § 70.14; or a postmark date generated for a paper copy mailed to EPA's designated physical address." 40 C.F.R. § 70.12(b). Note that 40 C.F.R. §70.14 repeatedly refers the public to EPA's title V petitions website for further details about petition submission methods. Since January 29, 2021, EPA's public-facing title V petitions website has expressly indicated that CDX uses the eastern time zone to establish a timestamp for purposes of determining the timeliness of petitions. *See https://www.epa.gov/title-v-operating-permits/title-v-petitions*; *see also* 40 C.F.R. § 70.14 (repeatedly referring the public to EPA's title V petitions website for further information on title V submission methods). And, in fact, EPA's email and CDX systems establish a date and time stamp based on eastern time zone. Although the part 70 regulations do not expressly state that timeliness will be determined according to the eastern time zone, by referring to EPA's website, the regulation effectively puts petitioners on notice of this.

Petition were timely filed with respect to the Plains Marketing Final Permit (No. 503-3013) or the AL Bulk Terminal Final Permit (No. 503-3035). However, both petitions were timely filed with respect to the Kimberly-Clark, Alabama Shipyard, and UOP permits.

Because neither Petition was timely filed in regard to the Plains Marketing and AL Bulk Terminal permits, EPA is not obligated under CAA § 505(b)(2) to grant or deny the petition claims that relate to those permits. However, many of the issues in both Petitions overlap significantly between the different permits. Indeed, certain claims address all five permits without distinguishing among them. Given the substantial overlap of claims affecting all five facilities, for the sake of completeness and equity in treatment of similarly situated permits, this Order reflects EPA's consideration of all issues raised in the Petitions, including the claims that were not timely filed. To the extent that any untimely challenges to the Plains Marketing or AL Bulk Terminal permits present enough information to demonstrate to EPA that the respective permit does not comply with the CAA, EPA is exercising its discretionary authority to reopen the permit(s) for cause, pursuant to CAA § 505(e) and 40 C.F.R. § 70.7(g).[12]

IV. DETERMINATIONS ON CLAIMS RAISED BY THE PETITIONERS

The January 4 Petition includes several claims raising similar issues on all five permits, as well as additional claims unique to the Plains Marketing and AL Bulk Terminal permits. The January 9 Petition repeats all of the claims raised in the January 4 Petition and includes additional permit-specific claims addressing the Kimberly-Clark Final Permit, Alabama Shipyard Final Permit, and UOP Final Permit. *See* Petition at 6; Petition Attach. D. For ease of reference, EPA's citations throughout the remainder of this Order will refer to the more comprehensive January 9 Petition. In so doing, EPA's response will effectively address all of the identical objection requests raised in the January 4 Petition as well. Although the Petitioners grouped their claims thematically (issue-by-issue), EPA has reorganized and renumbered the claims permit-by-permit.

A. Plains Marketing

Additionally, the EPA Administrator has a nondelegable duty to respond to timely filed petitions under CAA § 505(b)(2). The Administrator is based in Washington, D.C., which is in eastern time zone. Thus, timeliness of title V petitions is based on eastern time zone (as opposed to some other time zone where a facility or petitioner might be located). Determining timeliness in this manner is also consistent with the approach taken in the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Appellate Procedure (FRAP), which apply "in any statute that does not specify a method of computing time," and which provide that the last day of a filing period ends "at midnight in the court's time zone" for electronic filings. FRCP Rules 6(a), 6(a)(4); FRAP Rules 26(a), 26(a)(4)(A). Here, the first Petition was filed by email as well as through EPA's designated electronic submission system (the Central Data Exchange, or CDX). The email submittal has a time stamp of 12:01 a.m. on January 4, 2023. The CDX system shows two duplicate submittals; the first has a time stamp showing its creation at 12:02 a.m. and its submission at 12:17 a.m. on January 4, 2023; the second was created at 12:20 a.m. and submitted at 12:23 a.m. on January 4, 2023. Thus, the first petition was filed on January 4, 2023. The Petitioners' statement that the January 4 Petition was filed on January 3 is incorrect. *See* January 9 Petition at 13.

[12] *See* January 9 Petition at 13 n.33 ("To the extent EPA determines that any portions of these Petitions are untimely, Petitioners request that EPA treat those portions as a petition to reopen under 40 C.F.R. §§ 70.7(f) and (g).").

Claim 1.a: The Petitioners Claim That "ADEM Failed to Re-Notice These Permits for Public Comment as Required by the Act and EPA Regulations."

This claim is found within section I.a in the Petition. The Petitioners group this claim together with the following claim (1.b, or I.b in the Petition) under an overarching claim titled "ADEM failed to comply with procedural requirements to issue these Permits." In this claim, the Petitioners present the same arguments addressing the permitting process for the Plains Marketing, AL Bulk Terminal, Kimberly-Clark, and Alabama Shipyard permits, with slightly different arguments addressing the UOP permitting process. EPA's response in this section applies to Plains Marketing. To the extent the same (or similar) arguments apply to the other permits, EPA's Order addresses them in the relevant subsections associated with those other permits.

Petitioners' Claim: The Petitioners claim that the original statement of basis accompanying the Plains Marketing draft permit lacked information essential for meaningful public review, in violation of 40 C.F.R. § 70.7(h)(2) and (a)(5), and ADEM's subsequent addition of information to the Plains Marketing Final SOB in response to public comments required the agency to re-notice the permit, which ADEM failed to do. *See* Petition at 18–20.

The Petitioners first describe how EPA has previously evaluated claims concerning the unavailability of information during the public comment period, highlighting that "the petitioner must demonstrate that the unavailability deprived the public of the opportunity to meaningfully participate during the permitting process" and that EPA specifically evaluates "whether the petitioner has demonstrated that the alleged flaws resulted in, or may have resulted in, a deficiency in the permit's content." *Id.* at 16 (quoting *In the Matter of U.S. Department of Energy – Hanford Operations, Benton County, Washington*, Order on Petition No. X-2016-13 at 11 (Oct. 15, 2018) (*Hanford Order*)). The Petitioners single out the importance of "information needed to determine the applicability of or to impose an applicable requirement." *Id.* at 16–17 (quoting *Hanford Order* at 11).

The Petitioners claim that they "and the general public have been 'deprived of the opportunity to meaningfully participate during the permitting process'" because the permit records lacked the title I permits upon which, the Petitioners claim, applicable requirements in the permits are based. *Id.* at 17–18 (quoting *Hanford Order* at 28). The Petitioners reference specific public comments that noted such information missing from each permit record. *See id.* at 18–19 n.48–52. The Petitioners acknowledge that ADEM added some of the requested information to the SOBs or permits in response to comments, but the Petitioners argue these additions do not comply with the requirements of 40 C.F.R. § 70.7(h)(2) and (a)(5) to provide a complete statement of basis during the public comment period.

The Petitioners assert that meaningful public involvement is a key pillar of environmental justice and that "a permitting authority's failure to provide relevant information to the public as part of the public comment process only reinforces the injustices faced by communities of color and low-income communities, depriving them of a fair opportunity to weigh-in on the polluting activities affecting their lived experiences." *Id.* at 20–21.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

As the Petitioners acknowledge, EPA has previously explained that in evaluating claims about the availability of information during the public comment period, to present grounds for EPA's objection, a petitioner must demonstrate that the unavailability of information resulted in, or may have resulted in, a flaw in the permit.

> Without such a showing, it may be difficult to conclude that the ability to comment on the information would have been meaningful. In implementing the requirements for public participation under title V, the EPA is mindful that the part 70 regulations were promulgated in light of CAA section 502(b)(6)'s requirement that state permit programs include "[a]dequate, streamlined, and reasonable procedures . . . for public notice, including offering an opportunity for public comment and a hearing." 42 U.S.C. § 7661a(b)(6).

Hanford Order at 11.[13] Here, the Petitioners fail to articulate the connection between their claims about the unavailability of information during the public comment period and any specific deficiency in the Plains Marketing Final Permit. The Petitioners do not allege (in this claim) any unresolved flaws in the Plains Marketing Final Permit, much less demonstrate that those flaws arose from the unavailability of information during the public comment period.

Moreover, EPA generally evaluates claims concerning information in the statement of basis by evaluating whether the permit record as a whole—not only the statement of basis, but also the responses to comments, and potentially other parts of the permit record—supports the terms and conditions of the permit.[14] That is, EPA will allow information contained anywhere in the permit record to satisfy the requirements of § 70.7(a)(5). This holistic view of the permit record is consistent with obligations on permitting authorities and petitioners throughout the permitting process. The public may submit comments with questions about the basis of a permit term that are not fully answered in the statement of basis, and the permitting authority is obligated to respond. 40 C.F.R. § 70.7(h)(6). A petitioner is expected to address the collective permit record, including the responses to comments, if it believes the permit record insufficient to support a permit term. 40 C.F.R. § 70.12(a)(2)(vi).

Here, the Petitioners acknowledge that ADEM provided information requested in public comments, either in the Plains Marketing RTC or in revisions to the Plains Marketing Final SOB. The Petitioners do not allege (in this claim) that the Plains Marketing Final SOB or permit record is now incomplete, only that ADEM should have re-noticed the permit because the additional information ADEM provided was not originally available during the public comment period.

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[13] *See also In the Matter of Sirmos Division of Bromante Corp.*, Order on Petition No. II-2002-03 (May 24, 2004) (*Sirmos Order)*.

[14] *See, e.g., In the Matter of US Steel Tubular Operations, LLC, Fairfield Works Pipe Mill* Order on Petition No. IV-2021-7 at 8–10 (June 16, 2022); *Hu Honua II Order* at 10–11; *Sirmos Order* at 15–16.

There is no per se requirement in either title V or Part 70 for a permitting authority to re-notice a permit after adding information to the statement of basis in response to public comments, and the Petitioners fail to cite any.[15] EPA's framework for evaluating this issue[16] recognizes, first of all, the permitting authority's discretion in deciding whether to re-notice a permit.[17] This discretion, however, is not unlimited and involves a fact-based, case-specific decision. In determining whether a second public comment period was necessary, EPA has applied the administrative law principle of "logical outgrowth" (typically used in the context of rulemakings) to title V permitting, stating:

> The CAA and its implementing regulations at part 70 provide for public comment on "draft" permits and generally do not require permitting authorities to conduct a second round of comments when sending the revised "proposed" permit to EPA for review. It is a basic principle of administrative law that agencies are encouraged to learn from public comments and, where appropriate, make changes that are a "logical outgrowth" of the original proposal.

In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC, Order on Petition No. II-2000-07 at 7 (May 2, 2001) (citations omitted). This procedure prevents a never-ending cycle of public notice each time a permitting authority provides additional information in response to public comments. The public retains the ability to challenge any new information in a title V petition.

The exchange of information during the Plains Marketing permitting action appears to have followed the sequence outlined above—ADEM noticed a draft permit with a statement of basis, the Petitioners submitted comments requesting additional information, ADEM supplied additional information in its RTC and final SOB, and the Petitioners submitted a title V petition. The Petitioners have not demonstrated that ADEM violated the public participation requirements in 40 C.F.R. § 70.7(h)(2) and (a)(5). To the extent that the Petitioners argue that the Plains Marketing Final Permit is still deficient or that specific permit terms are unsupported by the permit record, EPA addresses such claims throughout the rest of this Order. In other words, while it is possible that updated information provided in an RTC and final SOB could provide grounds for a petitioner to identify a flaw in a permit, that does not necessarily require a permitting authority to re-notice the permit when updating that information. The title V petition process continues to provide an adequate remedy by which EPA can address flaws in permits,

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[15] EPA's regulations specify when public notice is required for specific types of permit actions, including initial permits, renewal permits, and significant permit modifications (but not minor permit modifications or administrative amendments). 40 C.F.R. § 70.7(h). EPA applies these regulations in situations where a permitting authority must revise a previously finalized permit or permit record in response to an EPA Order granting a petition (as these revisions constitute a separate permit action). However, these regulations do not directly address what types of changes necessitate a new round of public notice when such changes are made to a permit *before it is finalized* (*i.e.*, within the same permit action).

[16] *See In the Matter of Salt River Project Ag. Improvement & Power Dist., Agua Fria Generating Station,* Order on Petition No. IX-2022-4 at 25–26 (July 28, 2022) (*Agua Fria Order*).

[17] "The determination of whether the comment period should be reopened in such a case is generally left to the sound discretion of the permit issuer." *In re Indeck-Elwood, LLC,* 13 EAD 126, 146 (EAB 2006).

and the petitions responded to in this Order are proof since EPA is addressing areas where permits are inadequate or not supported by the record.

EPA recognizes the importance of meaningful public involvement in the permitting process, especially in cases where potential environmental justice concerns exist.[18] EPA encourages ADEM to prioritize providing clear, comprehensive information to the public throughout the permitting process to help ensure that the people most affected by the permitting action can participate in the decisions that will impact their lives.

Claim 1.b: The Petitioners Claim That "ADEM Did Not Provide the 'Information Necessary to Review Adequately the Proposed Permit' Given the Errors and Inadequacies in the Documents ADEM Provided in Support of These Permits."

This claim is found within section I.b in the Petition. The Petitioners group this claim together with the previous claim under an overarching claim titled "ADEM failed to comply with procedural requirements to issue these Permits." In this claim, the Petitioners present the same arguments addressing the permitting process for all five permits. Again, EPA's response in this section applies to Plains Marketing. EPA's Order addresses these arguments as applied to the remaining four permits in the relevant subsections associated with those permits.

Petitioners' Claim: The Petitioners claim that ADEM failed to submit information required by 40 C.F.R § 70.8(c)(3)(ii) because the supporting information submitted for the Permits to the "Public Files" on the EPA Region 4 Alabama Permit Database was disorganized, unclear, and contained errors. The Petitioners state that it was particularly difficult to determine if ADEM responded meaningfully to public comments. Petition at 22–23, 27 (citing 40 C.F.R. § 70.8(a)(1)).

The Petitioners assert that the names of the documents ADEM provides in "Public Files" do not indicate what the document is or when it was produced, and nor is this information at the beginning of each document. *Id.* The Petitioners note that ADEM made numerous changes to the permits and SOBs and mentioned these changes in the RTCs, but not with enough specificity for the Petitioners to easily locate the changes. *Id.* at 24. Although the Petitioners acknowledge that the revised SOBs for Plains Marketing, AL Bulk Terminal, Kimberly-Clark, and UOP denote changes using bold text, they claim this practice was not followed in every SOB and not for changes to draft permits. *Id.* at 24–25. The Petitioners emphasize that making things as clear as possible in the permit record is especially important when interacting with communities with environmental justice concerns, such as those surrounding these facilities. *Id.* at 25 (citing Petition Attach. B, EPA Office of Air and Radiation, *EJ in Air Permitting – Principles for Addressing Environmental Justice Concerns in Air Permitting* at 3 (December 22, 2022)).

Moreover, the Petitioners argue that ADEM's RTCs are generally inadequate and fail to demonstrate that ADEM responded to all significant comments. *Id.* The Petitioners allege that

[18] *See, e.g.*, EPA Office of General Counsel *Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions* at 5, 10, and 16 (August 2022); *EPA Legal Tools to Advance Environmental Justice* at 49 (May 2022); EPA Office of Air and Radiation *EJ in Air Permitting – Principles for Addressing Environmental Justice Concerns in Air Permitting* at 3 and 5 (December 22, 2022).

ADEM summarizes pages of comments into simplified summaries without referencing the specific comments, that ADEM's responses do not match the richness and length of comments and often fail to fully engage with comments. *See id.* at 25–27. In support, the Petitioners contrast the page counts of Petitioners' comments on each permit and the corresponding RTC, showing that Petitioners' comments were longer. *See id.* at 26–27.

The Petitioners conclude by claiming that these deficiencies in the permit records amount to a failure to submit "information necessary to review adequately the proposed permit" in each case as required by 40 C.F.R. 70.8(c)(3)(ii). *Id.* at 27.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

To present grounds for EPA to object, a petitioner must claim that the permit, permit record, or permit process is not in compliance with applicable requirements or requirements under part 70. 40 C.F.R § 70.12(a)(2). The Petitioners' criticisms regarding the labeling and organization of documents for public review fail to present such a claim.

In the event that EPA finds, or a petitioner demonstrates, a potential flaw in a permit, permit record, or permit process, and the information submitted by the permitting authority is inadequate for EPA to review whether the permit complies with the CAA or part 70, EPA will invoke 40 C.F.R § 70.8(c)(3)(ii) to object to the issuance of the permit.[19] However, 40 C.F.R § 70.8(c)(3)(ii) does not impose a requirement on the permitting authority to submit any particular information to EPA. Other part 70 regulations contain such requirements, including the requirement to provide various information to the public and/or EPA, including a statement of basis and response to comments. *See, e.g.*, 40 C.F.R. §§ 70.7(a)(5), (h)(2), (h)(5)–(6), 70.8(a)(1). The Petitioners do not claim here that any of these specific requirements under part 70 have not been met (that, *e.g.*, the Plains Marketing Final SOB is incomplete or lacks essential information). Instead, the Petitioners merely claim that the public documents submitted to EPA are confusing and difficult to sort through, hindering public participation in the permitting process. The Petitioners have not demonstrated that this lack of clarity led to a violation of any specific part 70 requirement, and thus have not raised any grounds for EPA to object.

The Petitioners' claims about ADEM's responses to public comments are similarly insufficient to demonstrate a basis for EPA's objection. EPA's regulations require that states respond to all "significant comments." 40 C.F.R. § 70.7(h)(6). In this claim, the Petitioners do not actually allege that ADEM failed to respond to *any specific* significant comment. Instead, the Petitioners claim that the Plains Marketing RTC is generally inadequate, and that this inadequacy makes it difficult to determine whether ADEM responded to *all* significant public comments. The Petitioners' general criticisms of ADEM's responses do not demonstrate that ADEM violated any of the public participation requirements of part 70, such as the requirement to respond to

[19] *See e.g.,* EPA's response to Kimberly-Clark Claim 5 in section IV.C of this Order, where EPA is exercising this authority to object to an incomplete permit record *after the Petitioners demonstrated a problem with respect to a substantive requirement (the requirement to set forth adequate monitoring).*

"significant comments" in 40 C.F.R. § 70.7(h)(6) or the requirement to transmit the response to comments to EPA in 70.8(a)(1).

Although the Petitioners have not demonstrated that these concerns present a basis for EPA to object to the Plains Marketing Final Permit, EPA observes that ADEM's approach to organizing the permit record and responding to public comments, in some cases, does not represent best practices. EPA encourages ADEM to examine whether any of its practices may hinder public participation and to prioritize clarity and comprehensive explanation in its responses to facilitate public participation in the permitting process.

Claim 2.a: The Petitioners Claim That "ADEM Failed to Adequately Respond to Comments Raising Specific Environmental Justice Concerns as Required by Title V."

Before presenting the specific requests for EPA's objection in claims 2.a and 2.b below, the Petitioners first provide an introductory section labeled claim II and titled "ADEM's Issuance of These Permits Does Not Comply with Title V's Public Participation Requirements or the Prohibition Against Disparate Impacts under Title VI of the Civil Rights Act of 1964." *See* Petition at 28–31.[20] In this section, the Petitioners state that ADEM submitted eight permits to EPA for review within a single week without informing the Petitioners, causing the public petition period for all five permits to coincide with winter holidays and end in the same week in early 2023. The Petitioners claim these actions deprived the Petitioners of the necessary time to raise all their concerns on the permits and, therefore, of meaningful participation in the permit process despite environmental justice concerns raised in the Petitioners' comments. *See id.*

The following claim is found within section II.a in the Petition. In this claim, the Petitioners present the same arguments addressing the permitting process for all five permits. Again, EPA's response in this section applies to Plains Marketing. EPA's Order addresses these arguments as applied to the remaining four permits in the relevant subsections associated with those permits.

Petitioners' Claim: The Petitioners claim that ADEM's *pro forma* response to comments raising specific environmental justice (EJ) concerns does not respond to "the varied, specific, and significant procedural and substantive issues raised in Petitioners' comments" and thus fails to satisfy the requirement of 40 C.F.R. § 70.8(a)(1) to respond meaningfully to all significant public comments. Petition at 31, 33.

The Petitioners first state that title V regulations require the permitting authority to provide a meaningful response to each significant public comment. *Id.* at 31 (citing 40 C.F.R. § 70.8(a)(1)). The Petitioners reference specific sections of Petitioners' comments on each draft permit that claimed ADEM had failed to address EJ concerns regarding the health effects from cumulative emissions from multiple sources in the Mobile area and, in the case of the Alabama

[20] This introductory section does not appear to be a separate claim requesting EPA's objection. To the extent the Petitioners did intend this introductory section to be a separate request for EPA's objection (beyond the issues in 2.a and 2.b), the Petitioners do not identify any applicable requirement or part 70 requirement that ADEM failed to satisfy and therefore present no basis for EPA's objection. 40 C.F.R. § 70.12(a)(2).

Shipyard permit, deficient outreach and public engagement with the affected community. *See id.* at 31–32.

The Petitioners claim that ADEM did not meaningfully respond to the individual, source-specific issues in these comments, but rather repeated the same statement that formed the entirety or most of its response in each case:

> The draft permit contains emission limits based on state and federal regulations that are protective of human health and the environment. Moreover, the Department has a robust public engagement program (see http://www.adem.alabama.gov/MoreInfo/pubs/ADEMCommunityEngagement.pdf) that utilizes a number of tools, such as EPA's EJ Screen: Environmental Justice Screening and Mapping Tool, to ensure that local residents and stakeholders are provided a meaningful opportunity to participate in the permitting process.

Id. at 32–33.[21] The Petitioners claim that there is no evidence that ADEM engaged in the types of community outreach mentioned in the document that ADEM references in this response or that EPA recommends, and that ADEM did not consider additional measures like fenceline monitoring or increased inspections. *Id.* at 33–34 (citing Petition Attach. B, EPA Office of Air and Radiation *EJ in Air Permitting – Principles for Addressing Environmental Justice Concerns in Air Permitting* at 2–3 (December 22, 2022)).

The Petitioners criticize ADEM's use of EJ Screen without additional practices, claiming it does not ensure meaningful community participation and that EPA has additional outreach expectations in permitting actions where there are EJ concerns. *Id.* at 33 (citing Objection to Suncor Energy, Inc. Plant 2 Title V Operating Permit at 7 (March 25, 2022)[22]).

The Petitioners conclude by encouraging EPA to object and direct ADEM to consider whether the cumulative emission impacts of these sources "warrants revised or additional monitoring, recordkeeping, and reporting requirements to assure that the sources and their emissions are in compliance with their Permits and do not violate CAA air quality requirements, including an analysis of the cumulative air impacts." *Id.* at 35.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

Although the Petitioners acknowledge that ADEM responded to their comments raising EJ concerns, they claim the response is inadequate and does not fulfill the requirement to respond to all significant comments. EPA's regulations expressly require permitting authorities to respond to all significant comments received during the public comment period. 40 C.F.R. § 70.7(h)(6). *See* 85 Fed. Reg. 6431, 6436, 6440 (February 5, 2020) (discussing what constitutes a "significant

[21] Quoting Plains Marketing RTC at 1; AL Bulk Terminal RTC at 1–2; Kimberly-Clark RTC at 5; Alabama Shipyard RTC at 1; UOP Updated RTC at 2–3.

[22] This March 25, 2022, objection was issued during EPA's 45-day review period. The objection letter is available at *https://www.epa.gov/system/files/documents/2022-03/epa-suncor-plant-2-title-v-objection-letter-2022-03-25.pdf.*

comment"). "Significant comments in this context include, but are not limited to, comments that concern whether the title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70." 85 Fed. Reg. 6436. In this case, the Petitioners have not demonstrated that ADEM failed to respond to any specific EJ-related comments that concerned whether the permit complies with all federal applicable requirements and requirements under part 70. Thus, the Petitioners have not demonstrated that any inadequacy of ADEM's responses presents grounds for EPA's objection.

Although the Petitioners have not demonstrated a basis for EPA's objection on this issue, EPA appreciates the importance of the Petitioners' EJ comments and encourages ADEM to thoughtfully consider and respond to such comments in the future. In permitting cases where there are potential EJ concerns, EPA has recommended enhanced outreach and proactive community engagement throughout the permitting process.[23] These types of practices are valuable because they help ensure that the communities affected by the permitting decision are provided with meaningful opportunities to provide input.[24]

EPA acknowledges that the facilities are located in close proximity to one another in an area home to many low-income and minority residents and a concentration of industrial activity, and the Petitioners have raised potential EJ concerns. EPA has given focused attention to the adequacy of monitoring and other compliance assurance provisions in evaluating the Petition. As explained in EPA's response to other claims, where the Petitioners have demonstrated that a permit fails to assure compliance with applicable requirements of the CAA, EPA is either objecting to, or reopening, the relevant permits.

Claim 2.b: The Petitioners Claim That "ADEM's Issuance of Eight Permits within One Week – All of Which Involved Significant Comments from Petitioners, Including Environmental Justice Concerns – Hinders Meaningful Public Participation by Protected Groups in Violation of Title VI."

This claim is found within section II.b in the Petition. In this claim, the Petitioners present the same arguments addressing the permitting process for all five permits. Again, EPA's response in this section applies to Plains Marketing. EPA's Order addresses these arguments as applied to the remaining four permits in the relevant subsections associated with those permits.

Petitioners' Claim: The Petitioners claim that ADEM's submittal of eight permits within a single week made it difficult for them to assess whether the permits comply with the CAA and the Alabama SIP, and whether ADEM responded to comments sufficiently. *See* Petition at 38. Accordingly, the Petitioners claim that this deprived the Petitioners of the opportunity to participate meaningfully in the permitting process thus amounting to "discrimination on the basis of color" in violation of title VI of the Civil Rights Act. *See* Petition at 38.

[23] *See supra* note 18. *See also* Objection to Suncor Energy, Inc. Plant 2 Title V Operating Permit, Encl. B, at 1 (March 25, 2022). Note that the EPA's EJ-focused discussion in the cited document was not itself presented as a basis for EPA's objection to that permit. This discussion was instead presented in a separate enclosure, which identified additional concerns or recommendations that did not rise to the level of an EPA objection.

[24] In the title V petition process, EPA generally does not evaluate whether a permitting authority has followed its own community engagement policies—as the Petitioners claim ADEM did not in this case—but rather the procedures for public participation in the title V implementing regulations in 40 C.F.R. § 70.7(h).

The Petitioners state that title VI of the Civil Rights Act applies to ADEM and its permitting program and prohibits discrimination on the basis of race, color or national origin. Petition at 36. The Petitioners state that their members include historically disadvantaged racial groups and communities of color. *Id.* The Petitioners claim that the permitted sources disproportionately burden residents of color. *Id.* at 37–38.

The Petitioners also assert that ADEM's actions exacerbated other public participation issues raised elsewhere in the Petition. *Id.* at 39. The Petitioners suggest that ADEM should release any subsequent actions in a staggered manner (*i.e.*, approximately six weeks apart) to allow for proper consideration by the Petitioners and the communities they represent. *Id.* at 39–40.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

To demonstrate a basis for EPA to object to a title V permit, a petitioner must demonstrate that the permit does not comply with the requirements of the CAA or its implementing regulations. 42 U.S.C. § 7661d(b)(2). The Petitioners' allegations regarding title VI of the Civil Rights Act of 1964 do not allege, much less demonstrate, that ADEM's actions violated any of the procedural or public participation requirements of the CAA or its implementing regulations.[25]

While this claim does not demonstrate that ADEM violated any requirements of the CAA, a permitting authority's compliance with the requirements of the CAA does not necessarily mean that it is complying with federal civil rights laws. EPA encourages ADEM to assess its obligations under civil rights laws and policies.

If the Petitioners believe there are relevant issues related to the issuance of these permits, the Petitioners may file a complaint under title VI of the Civil Rights Act of 1964, as amended, and EPA's implementing regulations, which prohibit discrimination by recipients of EPA assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d *et seq.*; 40 C.F.R. Part 7.[26] As a recipient of EPA financial assistance, ADEM's activities and programs, including its issuance of title V permits, are subject to the requirements of title VI and EPA's title VI regulations.

Claim 3: The Petitioners Claim That "Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit."

[25] *See In the Matter of Tesoro Refining and Marketing Co.*, Order on Petition No. IX-2004-6 at 47 (March 15, 2005) (denying a claim related to environmental justice and title VI of the Civil Rights Act); *In the Matter of Borden Chemical, Inc., Formaldehyde Plant*, Order on Petition No. 6-01-1 at 49–51 (December 22, 2000) (similar response); *In the Matter of Exxon Chemical Americas, Baton Rouge Polyolefins Plant*, Order on Petition No. 6-00-1 at 7–10 (April 12, 2000) (similar response).

[26] EPA notes that the Petitioners separately filed a complaint under title VI of the Civil Rights Act of 1964 related to the issues they present in this claim. Although EPA rejected the title VI complaint without prejudice on July 18, 2023 for the reasons explained in EPA's rejection letter, EPA's rejection letter also states that the complaint may be refiled following EPA's Order responding to the title V petition. To the extent the Petitioners believe EPA's Order does not resolve the issues presented in the title VI complaint, the Petitioners may refile that complaint.

Before enumerating the permit-specific claims that follow in the remainder of the Petition, the Petitioners first lay out the factual and legal background for these claims in a section labeled III.a and titled "The Permits' terms fail to comply with significant requirements of the CAA, especially with regard to the adequacy of synthetic minor limits and monitoring, recordkeeping, and reporting requirements." Petition at 40; *see id.* at 40–47. Various substantive parts of this section have been incorporated into the relevant summaries of the Petitioners' claims below.

The following claim is found within section III.b in the Petition. In this claim, the Petitioners present the same arguments addressing the permit records for all five permits. Again, EPA's response in this section applies to Plains Marketing. EPA's Order addresses these arguments as applied to the remaining four permits in the relevant subsections associated with those permits.

Petitioners' Claim: The Petitioners claim that ADEM's practice of voiding preconstruction air permits once their requirements are incorporated into title V permits is unlawful. Petition at 48.

The Petitioners first summarize the requirement to include all federally enforceable emission limits and associated monitoring requirements in title V permits. *See id.* at 40 (citing 42 U.S.C. § 7661c(a), (c)). The Petitioners claim that any title I permit used to avoid major source NSR requirements must be included in the permit record "because its contents are needed to impose the applicable requirements that allow the facility to escape major source permitting," and that ADEM has failed to require permit applicants to include this information, despite the Petitioners' comments. *Id.* at 41.

The Petitioners note that in several RTCs, ADEM states that the preconstruction air permits, in which certain limits were established, are void and no longer relevant for title V purposes. *Id.* at 47–48 (quoting Plains Marketing RTC at 5, 8; AL Bulk Terminal RTC at 3, 4). The Petitioners claim that ADEM cannot void permits that are required for facilities to show compliance with the CAA and AL SIP, asserting that the CAA requires terms and conditions of such permits to be included in title V permits, and that such terms are applicable requirements that exist independently of the title V permits that contain them. *Id.* at 48 (citing 42 U.S.C. § 7661c(a); 40 C.F.R. § 70.2).

In response to ADEM's assertion that air permits authorize construction, the Petitioners claim that air permits are also required for operation under the AL SIP. *Id.* (citing AL Admin. Code 355-3-14-.01(1)(b)).[27] The Petitioners also reference EPA guidance, explaining that title V permits do not "supersede, void, replace, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits." *Id.* at 49 (quoting Letter from John S. Seitz to R. Hodanbosi and C. Lagges, Enclosure A at 4 (May 20, 1999)). The petitioners claim that

[27] This is likely a typographical error, as the cited regulation does not exist. The Petitioners likely meant to cite AL Admin. Code 335-3-14-.01(1)(b), which is a general provision for Air Permits, specifying, "Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit."

synthetic minor limits[28] must be permanent and enforceable and title V permits cannot fulfill this requirement because they expire. *Id.*

The Petitioners conclude by stating "EPA should object to all five of these Permits and direct ADEM to stop its practice of voiding preconstruction air permits required by the CAA and the Alabama SIP and to reissue the unlawfully voided preconstruction permits underlying the Title V Permits at issue in this Petition[.]" *Id.* at 50.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

It appears that the Petitioners are raising concerns with what they believe to be a general programmatic deficiency in the way that ADEM incorporates conditions from title I preconstruction permits into title V permits, resulting in "void" title I permits. To the extent that the Petitioners' concerns relate to ADEM's implementation of its EPA-approved SIP regulations governing NSR permitting, the fate of individual NSR title I permits, or to the content of the EPA-approved SIP regulations, *e.g.*, Alabama Administrative Code 335-3-14-.02(5), there are SIP-based avenues to address those problems. *See, e.g.*, 42 U.S.C. § 7410(k)(5); *see also* 42 U.S.C. § 7410(a)(2)(H).

Under CAA § 505(b)(2), a petitioner must demonstrate that "the permit is not in compliance with the requirements" of the CAA to present grounds for EPA to object to the Permit. 42 U.S.C. § 7661d(b)(2).Here, the Petitioners have not alleged any substantive flaw with any of the Permit's conditions, much less explained how ADEM's practice of "voiding preconstruction air permits" contributed to such a flaw. The Petitioners do not cite or provide analysis related to any specific operating permit condition. 40 CFR § 70.12(a)(2)(i). Absent a demonstration that ADEM's practices resulted in a title V permit that does not satisfy the CAA or its implementing regulations, the title V petition process is not the appropriate forum to challenge such procedures.

Claim 4: The Petitioners Claim That "ADEM Erroneously Cited Its Major Source PSD/NSR Permit Program as Its Authority to Create Synthetic Minor VOC Emission Limits."

This claim is found within section III.C.a.i in the Petition. This claim and several of the following claims (numbered 4 and higher under each permit's section in this Order) are thematically similar, but involve facts specific to each permit and are thus addressed separately. As applied to all five permits, these claims are grouped in the Petition under a section labeled III.C and titled "The emission limits for the purpose of limiting PTE in the Permits are

[28]A permit applicant may request a permitting authority to establish enforceable limits that restrict the source's potential to emit (PTE) in order to avoid being subject to more stringent requirements. *See* ADEM Admin. Code r. 335-3-14-.04(2)(d) (ADEM's PSD regulations defining "Potential to Emit," including "[a]ny physical or operational limitation on the capacity of the source to emit a pollutant"); *see also* ADEM Admin. Code r. 335-3-16-.01(1)(i), (u). These limits are often referred to as "synthetic minor limits" or "PTE limits" because the source's "maximum capacity to emit" for PTE purposes is calculated based on those limits.

insufficient to avoid Major Source permitting requirements for the NAAQS pollutants and the MACT/NESHAP requirements." Petition at 50.

Petitioners' Claim: The Petitioners claim that ADEM has not set forth the legal and factual basis for the synthetic minor limit on VOC emissions from the Truck Loading Operations in the Plains Marketing Final Permit as required by 40 C.F.R. § 70.7(a)(5). Petition at 51.

The Petitioners claim that ADEM erroneously cites its major source PSD regulations generally, ADEM Admin. Code r. 335-3-14-.04, as the authority for the synthetic minor limit. *Id.* (citing Plains Marketing Final Permit at 27). The Petitioners claim that this citation is incorrect because the PSD regulations do not apply to synthetic minor permits. *Id.* at 52. Furthermore, the Petitioners allege that ADEM failed "to provide the particular regulatory provision(s) it relied on from its PSD/NSR SIP regulations that provide the authority to create PTE limits to avoid the PSD requirements." *Id.*

The Petitioners allege that ADEM "fails to rely on its minor source SIP regulations to create synthetic minor emission limits that allow a source to escape major source permitting requirements." *Id.* at 42.

Additionally, the Petitioners allege that because ADEM "failed to use and follow the requirements from one of its SIP regulations to create synthetic minor VOC emission limits, the Plains Marketing LP facility must be treated as a major PSD source for its VOC emissions" and that since the Plains Marketing Final Permit does not contain the relevant PSD requirements for VOCs (including BACT), it fails to assure compliance with major source PSD requirements. *Id.*
EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

The Petitioners allege that ADEM's citation of its PSD regulations generally (ADEM Admin. Code r. 335-3-14-.04) in the Plains Marketing Final Permit fails to satisfy the requirement of 40 C.F.R. § 70.7(a)(5) "to set forth the legal and factual basis for the synthetic permit conditions[.]" Petition at 51.

40 C.F.R. § 70.7(a)(5) states: "The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it." This regulation pertains only to documents in the permit record (*e.g.*, the statement of basis) and not to any citations of authority in the title V permit itself. Here, as ADEM explained in its RTC addressing this issue, in addition to citing the PSD regulations, the Plains Marketing Final SOB contains references to Air Permit No. 503-3013-X011 which established the synthetic limit on crude oil throughput on the Truck Loading

Operations in 2005.[29] The Petitioners fail to address this explanation and ADEM's responsive revision to the Plains Marketing Final SOB, focusing narrowly on the citations in the Plains Marketing Final Permit. *See* 40 C.F.R. § 70.12(a)(2)(vi). The Petitioners, therefore, have failed to demonstrate that ADEM did not satisfy the requirements of 40 C.F.R. § 70.7(a)(5).

To the extent the Petitioners suggest that an allegedly incorrect citation of authority would somehow automatically render the synthetic minor limit ineffective to restrict PTE, and accordingly, that the modification related to the Truck Loading Operations should have triggered PSD permitting, the Petitioners are incorrect. Whether the permit record satisfies 40 C.F.R. § 70.7(a)(5) is distinct from whether the underlying synthetic minor limit is effective and whether the source or modification at issue received the appropriate preconstruction permit. The Petitioners have not demonstrated a basis for objection related to either issue.

Claim 5: The Petitioners Claim That "The Synthetic Minor PTE Limits Included in the Permits are Inadequate for a Number of Reasons."

This claim is found within section III.C.b.i in the Petition.

Petitioners' Claim: The Petitioners claim that "PTE limits" are ineffective at limiting PTE below relevant thresholds because of numerous errors that ADEM made in calculating PTE, namely, excluding insignificant activities, missing sources, and fugitive emissions from those calculations, and using inaccurate software and emission factors. *See* Petition at 57–63. The Petitioners summarize major source emission thresholds for PSD, quote portions of the definition of PTE from Alabama's SIP, and claim that ADEM must make source determinations that account for all parts of each source to determine major, minor, or synthetic minor source status for each pollutant. *See id.* at 43–44.

The Petitioners claim that ADEM erroneously excluded emissions from "insignificant activities" in calculating PTE, specifically emissions from painting storage tanks, tank cleaning, wastewater and stormwater runoff, disposal, and storage tanks. *See id.* at 58–60. The Petitioners note that "insignificant activities" cannot be excluded from major source applicability determinations. *Id.* at 58 (quoting 60 Fed. Reg. 57349). The Petitioners also criticize ADEM's response to comments on this issue as too general—in that ADEM merely refers to the ADEM website and states a list of insignificant activities can be found there, but not whether EPA has approved this list—thus amounting to a failure to respond to their comments. *Id.* at 59.

The Petitioners claim that ADEM failed to address and respond to comments on "missing sources" in calculating PTE, specifically emissions from ships, barges, tank trucks, a pipeline, wastewater, and stormwater. *See id.* at 60 n.207.

[29] EPA notes that the Plains Marketing Final Permit does not cite Air Permit No. 503-3013-X011 because, as ADEM explains, the latter permit is "void." *See* Plains Marketing RTC at 5. EPA understands that there may be some confusion related to the status of the permits that ADEM treats as "void," and that this situation may relate to the citations for authority within the title V permit itself. However, as the Petitioners have not alleged any violation of regulatory requirements that govern the required content of title V permits (*e.g.*, 40 C.F.R. § 70.6(a)(1)(i)), EPA need not address the citations within the title V permit at this time. EPA will work with ADEM to help improve clarity on this issue in the future.

The Petitioners claim that ADEM failed to include fugitive emissions from the marine terminal and the vessels at the marine terminal in PTE calculations and failed to respond to related comments. *Id.* at 61. The Petitioners also claim that ADEM failed to require monitoring of these fugitive emissions, alleging "There are neither specific compliance or performance test methods/procedures nor emission monitoring requirements applicable to the marine loading operations." *Id.*

The Petitioners criticize the use of TANKS 4.09d software for estimating emissions. *See id.* at 61–62. The Petitioners claim that the software is "unable to accurately calculate limitations for heated tanks, lacked functions for calculating flashing, cleaning, and roof landing emissions, and inaccurately calculated monthly emissions," resulting in inadequate "PTE limits." *Id.* The Petitioners also claim ADEM's response to related comments is inadequate and reveals that ADEM misunderstands "EPA's statements and decisions regarding the use and accuracy of the TANKS software." *Id.* at 62 (citing Plains Marketing RTC at 8).

The Petitioners criticize ADEM's reliance on the applicant's use of emission factors in estimating emissions from the "truck rack" and marine terminal loading operations. *Id.* The Petitioners insist the Plains Marketing Final Permit must include either periodic monitoring or emissions testing to develop representative emission factors for the "crude oil and diesel fuel that is loaded at the truck rack and marine docks." *Id.* at 62 –63. Furthermore, the Petitioners state that the Plains Marketing Final Permit must include "testing requirements for monitoring, recordkeeping and reporting provisions for all forms of PM, HAPs, NOX, SO2, CO, and VOC emissions, which are needed to demonstrate compliance with the applicable requirements of the Act." *Id.* at 63.

The Petitioners conclude this claim by asserting that because "ADEM failed to ensure that the PTE limits include all sources of the relevant pollutants at the facility or consider Petitioners' detailed comments on the issue, EPA must object to the VOC PTE limits contained in the Plains Marketing Permit." *Id.*

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

Under CAA § 505(b)(2), a petitioner must demonstrate that "the permit is not in compliance with the requirements" of the CAA to present grounds for EPA to object to the permit. 42 U.S.C. § 7661d(b)(2). It is not clear what deficiency in the Plains Marketing Final Permit the Petitioners are alleging in this claim. The Petitioners state that "PTE limits" and "VOC PTE limits" are inadequate, without reference to any specific limit. The Plains Marketing Final Permit contains only one PTE or synthetic minor limit—on crude oil throughput related to VOC emissions from the Truck Loading Operations, so EPA presumes that the Petitioners' concerns relate to this limit. *See* Plains Marketing Final SOB at 4. However, the Petitioners fail to demonstrate the relevance of their criticisms of PTE calculations to this limit and do not cite or analyze any permit terms related to this limit on the Truck Loading Operations. The Petitioners also do not cite or analyze any other limits in the Plains Marketing Final Permit that might be deficient based on the concerns raised in this claim. 40 C.F.R. § 70.12(a)(2)(i).[30]

[30] *See supra* notes 6–8 and accompanying text.

The Petitioners' claim that "the PTE limits [fail to] include all sources of the relevant pollutants at the facility" Petition at 63, 71, appears to reflect a misunderstanding. The Facility *is* an existing major source of VOC emissions, as ADEM clearly states in the Plains Marketing Final SOB and reiterates in the Plains Marketing RTC.[31] The synthetic minor limit on the Truck Loading Operations does not and is not intended to restrict the entire facility's PTE under the major source threshold for VOC emissions. The limit was requested for a modification and to restrict its emissions under the threshold for a major modification and thus avoid PSD permitting *for that modification*, and is, therefore, only applicable to the emission unit added in that modification—the Truck Loading Operations. The only PTE that is relevant to this limit is the PTE of the Truck Loading Operations. The related PTE calculation need not include any other emission units.

To the extent that the Petitioners challenge other PTE calculations in any other regard, they do not articulate the relevance of these calculations to any permit terms. The Petitioners do not analyze any specific calculation to support their assertion that such a calculation may underestimate emissions. The Petitioners do not state how more "correct" calculations may have changed any requirements in the Plains Marketing Final Permit. Accordingly, the Petitioners have failed to demonstrate any flaw in the Plains Marketing Final Permit arising from allegedly faulty PTE calculations. *See, e.g.*, *In the Matter of Drummond Co., Inc., ABC Coke Plant*, Order on Petition No. IV-2019-7 at 17–18 (June 30, 2021) (*ABC Coke Order*); *In the Matter of Waelz Sustainable Products, LLC*, Order on Petition No. V-2021-10 at 19–21 (*Waelz Order*) (denying claims alleging inaccurate emission calculations where the petitioners did not demonstrate how those concerns related to the title V permit at issue).[32]

To the extent the Petitioners claim that ADEM failed to respond to their comments on these issues, they are incorrect. ADEM did respond to the Petitioners' comments on emissions from "missing sources,"[33] "insignificant activities," fugitive emissions, the use of the TANKs program, the use of AP-42 emission factors, and PTE calculations generally—referring the Petitioners to the permit application and the Plains Marketing Final SOB, where ADEM added a PTE table. *See* Plains Marketing RTC at 6, 7, and 9. The Petitioners have not made clear how any additional explanation would have been relevant to whether the Plains Marketing Final Permit assures compliance with all applicable requirements, and thus present no grounds for EPA's objection.

It is unclear whether the Petitioners intended issues related to monitoring of fugitive emissions from the Marine Loading Operations to present an independent basis for EPA's objection, as this does not seem closely related to the Petitioners' claims related to PTE. The Petitioners do not

[31] Plains Marketing Final SOB at 4; Plains Marketing RTC at 7.

[32] Note, EPA is not evaluating whether the PTE calculations are correct, and this response in no way precludes any enforcement that may result as to incorrect or incomplete emission calculations.

[33] ADEM explained that emissions from some of these sources were indeed calculated and are included in the facility's PTE (emissions from the truck and marine terminal loading operations), some are secondary emissions and therefore not included (emissions from the pipeline network and the trucks, ships, and barges themselves), and others are associated with insignificant activities (emissions from wastewater and stormwater). Plains Marketing RTC at 6.

identify any limit or other requirement applicable to the Marine Loading Operations with which monitoring requirements would be necessary to assure compliance. 40 C.F.R. § 70.12(a)(2)(i)–(ii).[34] It does not appear that the Marine Loading Operations are subject to any emission limit in the Plains Marketing Final Permit.

Public comments did not raise with reasonable specificity issues related to the use of emission factors for compliance demonstrations. 42 U.S.C. § 7661d(b)(2); *see* 40 C.F.R. §§ 70.8(d), 70.12(a)(2)(v). Even if they had, the Petitioners do not identify, cite, or analyze any permit terms that are inadequate to assure compliance with their underlying applicable requirements due to their use of emission factors, and thus have not presented grounds for EPA's objection.

Claim 6: The Petitioners Claim That "The Permits Fail to Include the Monitoring, Recordkeeping and Reporting Necessary for Those Limits to Comply with the Act."

This claim is found within section III.C.c.i in the Petition.

Petitioners' Claim: The Petitioners claim that the Plains Marketing Final Permit's monitoring, reporting, and recordkeeping requirements do not assure compliance with the synthetic minor limit on crude oil throughput on the Truck Loading Operations, as required by C.F.R. § 70.6(a)(3). Petition at 68–70.

The Petitioners state that synthetic minor limits must be legally and practically enforceable, and emphasize the importance of clear monitoring, recordkeeping, and reporting requirements. *See id.* at 44–45 (citing *In the Matter of Yuhuang Chemical, Inc.*, Order on Petition No. VI-2015-03 (August 31, 2016) (*Yuhuang II Order*); *In the Matter of Cash Creek Generation, LLC,* Order on Petition No. IV-2010-4 (June 22, 2012*)* (*Cash Creek II Order*)). Furthermore, the Petitioners claim that "[i]f a synthetic-minor-source permit does not have adequate permit limitations, the facility would be considered a major source and subject to the more stringent requirements of the major-source permitting programs." *Id.* at 46.

The Petitioners criticize the level of specificity in the Plains Marketing Final Permit's terms for monitoring crude oil throughput, noting the lack of any description of measurement methods (*e.g.*, a metering system). *Id.* at 69. The Petitioners argue that the Plains Marketing Final Permit therefore lacks "methods to track throughput that are 'sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action.'" *Id.* (quoting *Yuhuang II Order* at 14). The Petitioners allege that the recordkeeping requirements associated with the crude oil throughput limit are similarly not specific enough to be practically enforceable. *Id.* at 70. The Petitioners also claim that the associated reporting requirements do not specify what information the source must include in the summaries they submit to ADEM. *Id.* Finally, the Petitioners claim that ADEM failed to respond to comments on these issues. *Id.* at 69–70.

The Petitioners also claim that ADEM failed to respond to comments and explain how this throughput limit corresponds to VOC emissions and "the relevant VOC threshold of 100 TPY," and how it limits other VOC-emitting activities at the facility. *Id.* At 71–73. The Petitioners

[34] *See supra* notes 6–8 and accompanying text.

claim that the absence of this information in the permit record violates the requirement under 40 C.F.R. § 70.7(a)(5) to provide the necessary basis for the limit in the statement of basis. *Id.* at 68–69, 71–73. Additionally, the Petitioners claim that because the limit on the Truck Loading Operations does not limit other VOC-emitting units and operating scenarios at the facility, it does not restrict the facility's PTE under 100 tpy of VOCs. *See id.* at 71–73. Therefore, the Petitioners claim this limit cannot allow the entire source to escape PSD permitting. *See id.* (citing 40 C.F.R. § 70.6(a)(9)).

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

As explained in EPA's response to Plains Marketing Claim 5, it appears that the Petitioners misunderstand the purpose of the synthetic minor limit on the Truck Loading Operations. This limit is not intended to restrict the VOC emissions of the entire facility below the threshold for major sources as the Petitioners suggest. Rather, it is intended to restrict the emissions of only the Truck Loading Operations below the threshold for major modifications to major sources. The Petitioners' arguments regarding the emissions of other units and operating scenarios are, therefore, not relevant to this limit.

To the extent that the Petitioners claim that ADEM failed to respond to comments regarding the basis for this limit, ADEM did respond to the Petitioners' comments on the PTE calculation that established the limit on the Truck Loading Operations. *See* Plains Marketing RTC at 8. ADEM identified the specific calculation method that was used and directed the Petitioners to the revised portion of the Plains Marketing Final SOB that specified which NSR permit established the limit and which title V permit first incorporated that NSR permit's terms. *See id.*[35] The Petitioners do not address this response and have not demonstrated that more information would be relevant to whether the permit complies with all federal applicable requirements and requirements under part 70.

With regard to the Petitioners' claims concerning the monitoring, recordkeeping, and reporting requirements related to this limit, as EPA has previously explained, a key concept in evaluating the enforceability of a limit on PTE is whether the limit is enforceable as a practical matter.[36] Such limits must be supported by monitoring, recordkeeping and reporting requirements "sufficient to enable regulators and citizens to determine whether the limit has been exceeded and, if so, to take appropriate enforcement action." *2002 Pencor-Masada Order* at 7. Determining whether a limit is enforceable as a practical matter requires a case-by-case, fact-specific inquiry. To present grounds for EPA's objection, a petitioner challenging such a limit must demonstrate why it is not enforceable as a practical matter. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.12(a)(2). Here, the Petitioners' general allegations concerning a lack of specificity in

[35] EPA encourages ADEM to ensure that all relevant parts of the permit record are available to the public, especially any permits mentioned in responses to public comments or statements of basis.

[36] *See, e.g.*, *Cash Creek II Order* at 15; *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC,* Order on Petition No. II-2001-05 at 4–7 (April 8, 2002) (*2002 Pencor-Masada Order*); *see also Agua Fria Order* at 13.

the monitoring, recordkeeping, and reporting requirements supporting the limit on the Truck Loading Operations do not meet that demonstration standard.[37]

The PTE limit on the Truck Loading Operations restricts gallons of crude oil throughput on an annual basis. The permit terms require Plains Marketing to calculate, maintain records of, and report monthly and 12-month rolling totals of exactly that—crude oil throughput for the Truck Loading Operations. *See* Plains Marketing Final Permit at 27–28. Regulators and citizens can determine whether the limit has been exceeded by comparing the reported 12-month rolling total of crude oil throughput in Plains Marketing's Semiannual Monitoring Report to the limit of 2,284,170 gallons. The Petitioners have not demonstrated that any further specificity in these monitoring, recordkeeping, and reporting requirements is needed to make the limit enforceable as a practical matter. The Petitioners provide no analysis of the relevant permit terms nor any examples of more specific permit terms to show that increased specificity is necessary to assure compliance.

B. AL Bulk Terminal

Claim 1.a: The Petitioners Claim That "ADEM Failed to Re-Notice These Permits for Public Comment as Required by the Act and EPA Regulations."

This claim is found within section I.a in the Petition.

Petitioners' Claim: The Petitioners claim that the original SOB accompanying the AL Bulk Terminal draft permit lacked information essential for meaningful public review in violation of 40 C.F.R. § 70.7(h)(2) and (a)(5), and ADEM's subsequent addition of information to the AL Bulk Terminal Final SOB following and in response to public comments required the agency to re-notice the permit, which ADEM failed to do. *See* Petition at 18–20. This claim is identical to Plains Marketing Claim 1.a (in section IV.A of this Order).
EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 1.a (in section IV.A of this Order). All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to AL Bulk Terminal.

Claim 1.b: The Petitioners Claim That "ADEM Did Not Provide the 'Information Necessary to Review Adequately the Proposed Permit' Given the Errors and Inadequacies in the Documents ADEM Provided in Support of These Permits."

This claim is found within section I.b in the Petition.

Petitioners' Claim: The Petitioners claim that the supporting information for the Permits provided by ADEM in the "Public Files" on the EPA Region 4 AL Permit Database was disorganized, unclear, and contained errors, noting that it was particularly difficult to determine if ADEM responded meaningfully to public comments. Petition at 23 (citing 40 C.F.R. §§ 70.8(a)(1) and 70.6(a)). This claim is identical to Plains Marketing Claim 1.b (in section IV.A of

[37] *See supra* notes 6–8 and accompanying text.

this Order).

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 1.b (in section IV.A of this Order). All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to AL Bulk Terminal.

Claim 2.a: The Petitioners Claim That "ADEM Failed to Adequately Respond to Comments Raising Specific Environmental Justice Concerns as Required by Title V."

This claim is found within section II.a in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's *pro forma* response to comments raising specific environmental justice (EJ) concerns does not respond to "the varied, specific, and significant procedural and substantive issues raised in Petitioners' comments" and thus fails to satisfy the requirement of 40 C.F.R. § 70.8(a)(1) to respond meaningfully to all significant public comments. Petition at 31, 33. This claim is identical to Plains Marketing Claim 2.a (in section IV.A of this Order).

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 2.a (in section IV.A of this Order). All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to AL Bulk Terminal.

Claim 2.b: The Petitioners Claim That "ADEM's Issuance of Eight Permits within One Week – All of Which Involved Significant Comments from Petitioners, Including Environmental Justice Concerns – Hinders Meaningful Public Participation by Protected Groups in Violation of Title VI."

This claim is found within section II.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's submittal of eight permits within a single week deprived the Petitioners of the opportunity to participate meaningfully in the permitting process by making it difficult for them to assess whether the permits comply with the CAA and AL SIP, and whether ADEM responded to comments sufficiently, amounting to "discrimination on the basis of color" in violation of title VI of the Civil Rights Act. *See* Petition at 38. This claim is identical to Plains Marketing Claim 2.b (in section IV.A of this Order).

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 2.b (in section IV.A of this Order). All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to AL Bulk Terminal.

Claim 3: The Petitioners Claim That "Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit."

This claim is found within section III.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's practice of voiding preconstruction air permits once their requirements are incorporated into title V permits is unlawful. Petition at 48. This claim is identical to Plains Marketing Claim 3 (in section IV.A of this Order).

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 3 (in section IV.A of this Order). All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to AL Bulk Terminal.

Claim 4: The Petitioners Claim That "ADEM Erroneously Cited Its Major Source PSD/NSR Permit Program as Its Authority to Create Synthetic Minor VOC Emission Limits."

This claim is found within section III.C.a.ii in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM has not set forth the legal and factual basis for the synthetic minor limits in the AL Bulk Terminal Final Permit as required by 40 C.F.R. § 70.7(a)(5). Petition at 51, 53.

Referencing similar arguments on the Plains Marketing Final Permit,[38] the Petitioners argue that ADEM's citation of its PSD regulations (ADEM Admin. Code r. 335-3-14-.04) as authority for the synthetic minor limits is inappropriate, and thus the AL Bulk Terminal Final Permit "fails to assure compliance with the PSD requirements for VOC emissions." *Id.* at 53.

The Petitioners also allege that ADEM failed to respond to comments on this issue. *Id.*

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

As explained in EPA's Response to Plains Marketing Claim 4 (in section IV.A of this Order), the regulation that the Petitioners claim ADEM violated-—40 C.F.R. § 70.7(a)(5)—pertains only to documents in the permit record (*e.g.*, the statement of basis) and not to any citations of authority in the title V permit itself. Here, the Petitioners focus narrowly on the citations in the AL Bulk Terminal Final Permit. They do not address ADEM's revisions to the AL Bulk Terminal Final SOB, which specify the construction permits that established the synthetic minor limits. The Petitioners are also incorrect in their claim that ADEM failed to respond to comments on this issue. ADEM's response referred the Petitioners to the AL Bulk Terminal Final SOB. The

[38] *See supra* page 24.

Petitioners fail to address this response. *See* 40 C.F.R. § 70.12(a)(2)(vi). The Petitioners, therefore, have failed to demonstrate that ADEM did not satisfy the requirements of 40 C.F.R. § 70.7(a)(5).

It is unclear why the Petitioners specifically refer to VOC emissions and related PSD requirements. AL Bulk Terminal is an existing major source of VOC emissions, and the AL Bulk Terminal Final Permit does not contain any synthetic minor limits on VOC emissions. The Petitioners do not cite any permit conditions relevant to their claims concerning PSD requirements for VOC emissions. Regardless, whether the permit record satisfies 40 C.F.R. § 70.7(a)(5) is distinct from whether any underlying synthetic minor limit is effective and whether the source or modification at issue received the appropriate preconstruction permit. The Petitioners have not demonstrated a basis for objection related to either issue.

Claim 5: The Petitioners Claim That "The Synthetic Minor PTE Limits Included in the Permits are Inadequate for a Number of Reasons."

This claim is found within section III.C.b.ii in the Petition.

Petitioners' Claim: The Petitioners request that EPA "object to the SO_2, VOC, and HAPs PTE limits" in the AL Bulk Terminal Final Permit because the corresponding PTE calculations do not encompass all pollution-emitting activities at the facility. Petition at 65. Additionally, the Petitioners claim that ADEM failed to respond to comments on these issues. *See id.* at 63–65.

Referring to similar arguments the Petitioners made regarding the Plains Marketing Final Permit,[39] the Petitioners claim that ADEM erroneously excluded emissions from "insignificant activities" in calculating PTE. Petition at 64. The Petitioners claim that several emitting sources are missing from the permit record: "the permit record does not address emissions from the truck traffic; emissions from the marine vessel operations; emissions from flanges, valves, pipes and pumps; emissions from oil/water separator(s); and emissions from transferring and receiving liquids from a neighboring facility's pipeline at [AL Bulk Terminal]'s dock facility." *Id.* The Petitioners claim that ADEM failed to respond to comments regarding fugitive PM emissions from roads and parking lots. *Id.* The Petitioners claim that "ADEM relied on the permit application's use of emission factors, which was selective and omitted emissions from all sources." *Id.* at 64–65.

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

The Petitioners fail to demonstrate that allegedly deficient PTE calculations have caused any flaw in the AL Bulk Terminal Final Permit. *See, e.g.*, *ABC Coke Order* at 17–18; *Waelz Order* at 19–21 (denying claims alleging inaccurate emission calculations where the petitioners did not demonstrate how those concerns related to the title V permit at issue). The Petitioners do not cite or analyze any permit terms related to limits on SO_2, VOC, or HAP emissions. 40 C.F.R. §

[39] *See supra* pp. 25–26.

70.12(a)(2)(i).[40] Nor do they analyze the PTE of any specific pollutant or emission unit. Nowhere do the Petitioners state how more "correct" PTE calculations may have changed any requirements in the AL Bulk Terminal Final Permit.

The Petitioners' claim that the limits on SO_2 are inadequate because they do not encompass all pollution-emitting activities at the facility, appears to reflect a misunderstanding. These limits, applicable to the oil heaters, do not and are not intended to restrict the entire facility's PTE under the major source threshold for SO_2 emissions. The limits were requested for modifications and were taken to restrict the modifications' emissions to less than the threshold for major modifications and thus avoid PSD permitting *for those modifications*. *See* AL Bulk Terminal Final SOB at 3–4. These limits, therefore, are only applicable to the emission units added in those modifications—the oil heaters. The only PTE that is relevant to these limits is the PTE of the oil heaters. The calculations need not include any other emission units.

To the extent that the Petitioners claim that ADEM failed to respond to comments on these issues, they are incorrect. ADEM did respond, noting that ADEM deems many of the emission sources that the Petitioners identified to be "Trivial and Insignificant Activities." *See* AL Bulk Terminal RTC at 2. ADEM also responded to comments on AP-42 emissions factors, defending their use "[i]n the absence of source specific emission factors." *Id.* at 1. The Petitioners have not addressed these responses or demonstrated that any more information would have been relevant to whether the Alabama Bulk Terminal Final Permit complies with all federal applicable requirements and requirements under part 70. Thus, the Petitioners have not demonstrated that any response or non-response to these comments provides grounds for EPA's objection.

Claim 6: The Petitioners Claim That "The Permits Fail to Include the Monitoring, Recordkeeping and Reporting Necessary for Those Limits to Comply with the Act."

This claim is found within section III.C.c.ii in the Petition.

Petitioners' Claim: The Petitioners raise three arguments relating to facility-wide synthetic minor limits on individual and total HAP emissions. Petition at 73–74.

First, the Petitioners claim that because the synthetic minor limits on individual and total HAPs apply facility-wide, the AL Bulk Terminal Final Permit must include "Plantwide Emission Limits (PALs)" in accordance with 40 C.F.R. § 52.21 (aa)(6)(i). *Id.*

Second, the Petitioners claim that the AL Bulk Terminal Final SOB fails to establish any relationship between throughput of products and PTE related to the facility-wide synthetic minor HAP limits necessary to exempt the facility from MACT requirements. *Id.* at 74.

Third and finally, the Petitioners claim that the monitoring, reporting, and recordkeeping, requirements associated with the facility-wide HAP limit are not practically enforceable. *Id.* (citing C.F.R. § 70.6(a)(3)). The Petitioners note that ADEM added the phrase "using the methods described in the application" to the relevant terms in the AL Bulk Terminal Final Permit to specify how emissions shall be calculated, but the Petitioners insist this phrase is unclear as to

[40] *See supra* notes 6–8 and accompanying text.

which application or which calculation methods it is referencing. *Id.* (quoting AL Bulk Terminal RTC at 5).

EPA's Response: This claim was not properly raised in a timely filed petition under CAA § 505(b)(2). However, in its discretionary review of the information presented by the Petitioners, EPA finds that cause exists to reopen and revise the AL Bulk Terminal Final Permit to assure compliance with all applicable requirements. 40 CFR § 70.7(g)(1), (f)(1)(iv).

Specifically, EPA has determined that the monitoring, reporting, and recordkeeping requirements associated with the facility-wide synthetic minor limits on individual and total HAP emissions must be revised for the following reasons.

To effectively restrict PTE, synthetic minor limits must be enforceable as a practical matter.[41] A limit on emissions alone (*i.e.*, without production and/or operating limits) must clearly specify how emissions will be measured or determined for purposes of demonstrating compliance with the limit. *See, e.g.*, *Yuhuang II Order* at 14; *Hu Honua II Order* at 10. Here, as the Petitioners note, ADEM added the phrase "using the methods described in the permit application" to each permit term associated with the facility-wide limits on HAP emissions in response to public comments claiming those permit terms were inadequate. *E.g.*, AL Bulk Terminal Final Permit at 12 and 16; *see* Petition at 74. Apparently, ADEM intended for this phrase to clarify how AL Bulk Terminal is to demonstrate compliance with the HAP limits. *See* AL Bulk Terminal RTC at 5.

In certain circumstances, it is acceptable to include requirements in a title V permit using incorporation by reference (IBR) to, *e.g.*, a permit application.[42] However, as EPA has previously explained:

> In order for incorporation by reference to be used in a way that fosters public participation and results in a title V permit that assures compliance with the Act, it is important that: (1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and date of the document be included so that there is no ambiguity as to which version of a document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation.

In the Matter of United States Steel Corp., Granite City Works, Order on Petition No. V-2009-03 at 43 (January 31, 2011).

[41] *See supra* note 36 and accompanying text.
[42] *See, e.g.*, White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, 40 (March 5, 1996) (explaining how IBR can satisfy the requirements of CAA § 504); *see also In the Matter of Valero Refining-Texas, L.P. Valero Houston Refinery*, Order on Petition No. VI-2021-8 at 17–18 (June 30, 2022) (*Valero Houston Order*).

Here, the phrase "using the methods described in the permit application" fails to provide sufficient information to identify the specific application(s) being referenced—as there are several documents to which this phrase might apply—or to determine the location of the calculation methods within such application(s), since a permit application can be voluminous. *See e.g., Valero Houston Order* at 15–18 (granting a claim where the permitting authority's IBR failed to adequately identify the location of necessary information in a permit application). The monitoring, recordkeeping, and reporting requirements, therefore, are not enforceable as a practical matter.

The Petitioners' remaining arguments are less persuasive and would not demonstrate a basis for EPA's objection (if they had been properly raised in a timely filed petition under CAA § 505(b)(2)) or for EPA to find that cause exists to reopen. With regard to PALs, the Petitioners seem to misunderstand that a PAL is a voluntary limit on facility-wide emissions of regulated NSR pollutants—but not on HAPs (*see* 40 C.F.R. § 52.21(b)(50)(v))—that may enable a source to avoid triggering major NSR review when making modifications. *See* 67 FR 80208 (December 31, 2002). Not all synthetic minor limits, even if they apply to an entire facility, are PALs or need to follow the specific requirements for PALs. With regard to the relationship between product throughput and emissions, the AL Bulk Final Permit does not contain any limit on allowable product throughput as the Petitioners suggest. Rather, the synthetic minor limit at issue is on emissions. Moreover, ADEM's RTC explained that the relationship between products and emissions was established in a prior preconstruction action, which is now referenced in the Alabama Bulk Terminal Final SOB. RTC at 5. The Petitioners fail to address this response or demonstrate why it was inadequate to address the issue raised in public comments. 40 C.F.R. § 70.12(a)(2)(vi).[43]

Direction to ADEM: ADEM must revise the permit as necessary to ensure that the tile V permit clearly identifies the method by which the AL Bulk Terminal will demonstrate compliance with the facility-wide limits on HAP emissions. If ADEM wishes to incorporate emission calculation methodologies contained in a permit application, the Permit must include information that identifies the location of the specific calculation methods being incorporated into the AL Bulk Terminal Final Permit. This information should include (at least) the title, date, and relevant page numbers (or section numbers) of the permit application that contains the calculation methods the source must use to demonstrate compliance with the facility-wide limits on HAP emissions. Furthermore, ADEM must evaluate and ensure that these limits apply to all actual emissions at the facility, and that all emissions are considered in determining compliance with the limits, including emissions from "Insignificant Activities."[44]

Claim 7: The Petitioners Claim That "ADEM Failed to Evaluate and Treat the Alabama Bulk Terminal Company LLC and the Hunt Refining Company as the Same Source."

This claim is found within section III.C.d.i in the Petition.

[43] *See supra* note 9 and accompanying text.
[44] *See Yuhuang II Order* at 14; *Hu Honua II Order* at 10–11; *Cash Creek II Order* at 15; *Kentucky Syngas Order* at 29–30.

Petitioners' Claim: The Petitioners claim that the AL Bulk Terminal and the Hunt Refinery should be treated as the same source because "they meet the three-prong test," and therefore the AL Bulk Terminal must be treated as a major source for HAPs. Petition at 80–81.

The Petitioners argue that the Alabama Bulk Terminal Company LLC and the Hunt Refining Company must be considered the same source because: (1) the facilities are owned by the same legal entity, and so are under common control, (2) the facilities share the same SIC code because the AL Bulk Terminal is allegedly a support facility to the Hunt Refinery and should therefore be classified as to its primary activity, and (3) the facilities are "contiguous and adjacent" because they share a functional relationship or interrelatedness. *See id.* (citing 40 C.F.R. § 70.2).

The Petitioners allege that ADEM failed to meaningfully respond to comments raising these arguments, provide a reasoned basis for treating the sources separately, or provide evidence that the facilities are not contiguous and adjacent. *Id.* at 81.

Finally, the Petitioners assert that because the Hunt Refinery is a major source of HAPs, ADEM must also treat AL Bulk Terminal as a major source for HAPs, remove all synthetic minor limits on HAP emissions in its permit, and identify all section 112 requirements applicable to it. *Id.*

EPA's Response: Even if this claim had been properly raised in a timely filed petition under CAA § 505(b)(2), it would not demonstrate a basis for EPA's objection for the following reasons.

Under the federal rules governing the title V operating permit program, pollutant-emitting activities are considered part of the same "major source" if they: (1) are located on one or more contiguous or adjacent properties; (2) are under the control of the same person (or persons under common control); and (3) belong to the same industrial grouping (2-digit "Major Group" Standard Industrial Classification (SIC) code). *See* 42 U.S.C. § 7661(2) (title V statutory definition); 40 C.F.R. §§ 70.2 and 71.2 (title V regulatory definitions).[45] Determining which activities should be considered part of a single major source is often referred to as a "source determination." Source determinations are evaluated on a case-by-case basis involving fact-specific decisions. As with all permitting decisions, a petitioner challenging a stationary source determination must demonstrate that it does not comply with the CAA or relevant implementing regulations.

Here, the Petitioners have not demonstrated that the AL Bulk Terminal and Hunt Refinery share the same major industrial grouping or that they are located on contiguous or adjacent properties. Regarding the major industrial grouping criterion, EPA's longstanding position is as follows:

> Each source is to be classified according to its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Thus, one source classification encompasses both primary and support facilities, even when the latter includes units with a different two-digit SIC code.

[45] ADEM's title V regulations reflect the same criteria. *See* ADEM Admin. Code r. 335-3-16-.01(1)(q). Although the Petitioners cite only the title V regulations governing this issue, the same three criteria are contained in EPA's and ADEM's NSR regulations. *See* 40 C.F.R. §§ 52.21(b)(5) and (6), 51.165(a)(1)(i) and (ii), and 51.166(b)(5) and (6); ADEM Admin. Code r. 335-3-14-.04(2)(e) and (f); ADEM Admin. Code r. 335-3-14-.05(e) and (f).

> Support facilities are typically those which convey, store, or otherwise assist in the production of the principal product.

45 Fed. Reg. 52695 (August 7, 1980). The Petitioners' general, single-sentence allegation that the AL Bulk Terminal is a support facility for the Hunt Refinery is insufficient to demonstrate that the two operations share a major industrial grouping. The Petitioners provide no analysis or support for their claim that the AL Bulk Terminal is a support facility to the Hunt Refinery.

The Petitioners have also not demonstrated that the two facilities are located on contiguous or adjacent properties. The Petitioners' argument appears to be based on the unexplained premise that the two facilities "share a functional relationship or functional interrelatedness." Petition at 80–81. However, EPA has issued guidance explicitly stating EPA does not consider functional interrelatedness in the interpretation of "adjacent" for purposes of title V (and NSR) source determinations. *See* Anne L. Idsal, *Interpreting "Adjacent" for New Source Review and Title V Source Determinations in All Industries Other Than Oil and Gas* at 7 (November 26, 2019). Instead, EPA recommends that permitting authorities focus exclusively on physical proximity when considering whether pollutant-emitting activities meet this criterion. *Id*. Here, the two facilities are located nearly 200 miles apart.[46] The Petitioners thus fail to explain why these operations should, or even, could, be considered "contiguous and adjacent."
ADEM did respond to Petitioners' comments on this issue, stating that the AL Bulk Terminal "is not adjacent to or co-located with any facility with which it shares ownership." AL Bulk Terminal RTC at 2. The Petitioners have not demonstrated that ADEM's decision was incorrect or insufficient. Therefore, the Petitioners have not demonstrated that the AL Bulk Terminal should be considered part of the same source as the Hunt Refinery. Thus, the Hunt Refinery's major source status has no relevance to the major source status of the AL Bulk Terminal or any of its permit terms.

C. Kimberly-Clark

Claim 1.a: The Petitioners Claim That "ADEM Failed to Re-Notice These Permits for Public Comment as Required by the Act and EPA Regulations."

This claim is found within section I.a in the Petition.

Petitioners' Claim: The Petitioners claim that the original SOB accompanying the Kimberly-Clark draft permit lacked information essential for meaningful public review in violation of 40 C.F.R. § 70.7(h)(2) and (a)(5), and ADEM's subsequent addition of information to the Kimberly-Clark Final SOB following and in response to public comments required the agency to re-notice the permit, which ADEM failed to do. *See* Petition at 18–20. This claim is identical to Plains Marketing Claim 1.a (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 1.a (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim.

[46] The AL Bulk Terminal is located in Chickasaw, Mobile County, and the Hunt Refinery is located in Tuscaloosa, Alabama.

All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Kimberly-Clark.

In addition, EPA notes that the situation the Petitioners present regarding the Kimberly-Clark permitting action—in relation to emission units X052 and X053—is not analogous to the other permitting actions and does not fit the arguments the Petitioners provide in this claim. In this case, ADEM removed language from the draft permit that the Petitioners flagged in public comments as unenforceable. *See* Kimberly-Clark RTC at 4. The comments on the draft permit that the Petitioners cite in this claim did not request information from construction permits. *See* Petition at 18 n.50. Nor did ADEM reference or add any information from underlying construction permits to the Kimberly-Clark Final SOB in response to these comments, as in the case of the other permits.

Claim 1.b: The Petitioners Claim That "ADEM Did Not Provide the 'Information Necessary to Review Adequately the Proposed Permit' Given the Errors and Inadequacies in the Documents ADEM Provided in Support of These Permits."

This claim is found within section I.b in the Petition.

Petitioners' Claim: The Petitioners claim that the supporting information for the Permits provided by ADEM in the "Public Files" on the EPA Region 4 AL Permit Database was disorganized, unclear, and contained errors, noting that it was particularly difficult to determine if ADEM responded meaningfully to public comments. Petition at 23 (citing 40 C.F.R. §§ 70.8(a)(1) and 70.6(a)). This claim is identical to Plains Marketing Claim 1.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 1.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Kimberly-Clark.

Claim 2.a: The Petitioners Claim That "ADEM Failed to Adequately Respond to Comments Raising Specific Environmental Justice Concerns as Required by Title V."

This claim is found within section II.a in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's *pro forma* response to comments raising specific environmental justice (EJ) concerns does not respond to "the varied, specific, and significant procedural and substantive issues raised in Petitioners' comments" and thus fails to satisfy the requirement of 40 C.F.R. § 70.8(a)(1) to respond meaningfully to all significant public comments. Petition at 31, 33. This claim is identical to Plains Marketing Claim 2.a (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 2.a (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim.

All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Kimberly-Clark.

Claim 2.b: The Petitioners Claim That "ADEM's Issuance of Eight Permits within One Week – All of Which Involved Significant Comments from Petitioners, Including Environmental Justice Concerns – Hinders Meaningful Public Participation by Protected Groups in Violation of Title VI."

This claim is found within section II.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's submittal of eight permits within a single week deprived the Petitioners of the opportunity to participate meaningfully in the permitting process by making it difficult for them to assess whether the permits comply with the CAA and AL SIP, and whether ADEM responded to comments sufficiently, amounting to "discrimination on the basis of color" in violation of title VI of the Civil Rights Act. *See* Petition at 38. This claim is identical to Plains Marketing Claim 2.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 2.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Kimberly-Clark.

Claim 3: The Petitioners Claim That "Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit."

This claim is found within section III.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's practice of voiding preconstruction air permits once their requirements are incorporated into title V permits is unlawful. Petition at 48. This claim is identical to Plains Marketing Claim 3 (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 3 (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Kimberly-Clark.

Claim 4: The Petitioners Claim That "The Synthetic Minor PTE Limits Included in the Permits are Inadequate for a Number of Reasons."

This claim is found within section III.C.b.iii in the Petition (similar claims elsewhere in this Order are numbered claim 5).[47]

[47] The Petitioners do not present a claim for the Kimberly-Clark Final Permit similar to "claim 4" for the other permits, on references to authority (under section III.C.a in the Petition). Therefore, the numbering for this Kimberly-Clark claim and for the remaining Kimberly-Clark claims is different than for the other permits.

Petitioners' Claim: The Petitioners claim that ADEM inappropriately applied AP-42 emission factors in calculating PTE for a single emission unit—EU X054, the No. 7 Tissue Machine—and that ADEM did not respond fully to Petitioners' comments. Petition at 65-66. The Petitioners specifically allege that these emission factors "impact the overall modeling analysis supporting the Permit," and that ADEM did not respond to comments addressing "the resulting impact on the Permit's limits." *Id.* at 66.

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

Under CAA § 505(b)(2), a petitioner must demonstrate that "the permit is not in compliance with the requirements" of the CAA to present grounds for EPA to object to the permit. 42 U.S.C. § 7661d(b)(2). Here, the Petitioners fail to demonstrate any flaw in the Kimberly-Clark Final Permit related to ADEM's use of AP-42 emission factors to calculate PTE for the Tissue Machine. The Petitioners fail to cite any permit condition or present any related analysis to support their general criticisms of PTE calculations. 40 C.F.R. § 70.12(a)(2)(i)–(iii).[48] To the extent that the Petitioners challenge the "modelling analysis supporting the permit" and its "resulting impact on the Permit's limits," they fail to describe the nature of this modeling, its relevance to any limit in the Kimberly-Clark Final Permit, or any specific deficiency of the modelling.

ADEM did respond to the Petitioners' comments on AP-42 emission factors, explaining that the PTE calculations were developed using "manufacturer's guarantees, and site developed factors" in addition to the AP-42 emission factors. Kimberly-Clark RTC at 3. The Petitioners have not demonstrated that any additional information would have been relevant to whether the Kimberly-Clark Final Permit complies with all federal applicable requirements and requirements under part 70.

Claim 5: The Petitioners Claim That "The Permits fail to include the Monitoring, Recordkeeping and Reporting Necessary for Those Limits to Comply with the Act."

This claim is found within section III.C.c.iii in the Petition (similar claims elsewhere in this Order are numbered claim 6).

Petitioners' Claim: The Petitioners claim that the monitoring, recordkeeping, and reporting requirements in the Kimberly-Clark Final Permit are inadequate to assure compliance with a synthetic minor limit on NO_x emissions from two combustion turbines. Petition at 75.

The Petitioners note that the 801 and 802 Combustion Turbines (emission units X052 and X053) are each subject to two discreet NO_x limits, including a synthetic minor limit of 3.46 lb/hr under a specific operating scenario—"while both the Combustion Turbine & Supplemental Burner are being operated." *Id.*; *see* Kimberly Clark Permit at 1–2. The Petitioners argue that this synthetic minor limit "can only be legally and practically enforceable if the Permit requires Kimberly-Clark to record when it [is] operating under the various scenarios and to do compliance testing using both operating scenarios." Petition at 76. The Petitioners note that ADEM's response to

[48] *See supra* notes 6–8 and accompanying text.

comments on this issue references "Subpart KKKK," but claim that ADEM's response fails to address the specific operating scenario issue raised in comments. *Id.* at 75 (quoting Kimberly-Clark RTC at 4).

Furthermore, the Petitioners claim that the monitoring requirements, which consist of an annual NO_x performance test, are inadequate to demonstrate compliance with a synthetic minor limit expressed in lbs/hr, and that ADEM's response does not justify the monitoring but simply indicates that these are federal monitoring provisions. *Id.* at 76 (citing Kimberly-Clark RTC at 3).

EPA's Response: For the following reasons, EPA grants the Petitioners' request for an objection on this claim.

Title V permits must "set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(c); *see* 40 C.F.R. § 70.6(c)(1). Here, the combustion turbines are subject to two apparently different NO_x emission limits—one NSPS limit (40 C.F.R. part 60, subpart KKKK), expressed as "the more stringent of 25 ppm @15% O_2 or 1.2 lb/MWh useful output," and one synthetic minor limit "while both the Combustion Turbine & Supplemental Burner are being operated," expressed as 3.46 lb/hr. Kimberly-Clark Final Permit at 1-2; *see* Kimberly-Clark Final SOB at 4.

The corresponding permit terms under "Compliance and Performance Test Methods and Procedures" and "Emission Monitoring," however, seem to refer to only a single NO_x limit. *E.g.*, "Compliance with *the nitrogen oxide limit* shall be determined by Reference Method 7e in Appendix A of 40 CFR Part 60." Kimberly Clark Final Permit at 1-3 (emphasis added). In response to the Petitioners' comments highlighting this incongruity, ADEM states "Subpart KKKK establishes the methods to be used for demonstrating compliance with *the NO_x limit,* which are reflected in the draft permit." Kimberly-Clark RTC at 4 (emphasis added). This response does not clarify whether or how the monitoring related to subpart KKKK assures compliance with *both NO_x limits,* in particular the hourly synthetic minor limit. The permit record is therefore inadequate for EPA to determine whether the Kimberly-Clark Final Permit "sets forth" the necessary monitoring requirements to assure compliance with the synthetic minor limit on NO_x emissions. 40 C.F.R § 70.8(c)(3)(ii).

ADEM has also not sufficiently justified how an annual performance test assures compliance with the synthetic minor limit, expressed in lbs/hr. Determining whether monitoring is adequate in a particular circumstance requires a context-specific evaluation. *In the Matter of CITGO Refining and Chemicals Company, L.P.,* Order on Petition No. VI-2007-01 at 7 (May 28, 2009) (*CITGO Order*). The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5).[49] In response to detailed comments on this issue, ADEM's justification for the monitoring requirements, presented in its RTC, simply states that the requirements in the Kimberly-Clark Final Permit are based on "federal rules" and "are sufficient for indicating compliance." Kimberly-Clark RTC at 3. This response does not

[49] Permitting authorities have an obligation to supplement monitoring, if the monitoring in an underlying applicable requirement is not sufficient to assure compliance with all permit terms and conditions. 40 C.F.R. § 70.6(c)(1); *CITGO Order* at 7.

explain *why* this monitoring is sufficient for both the NSPS-based and synthetic minor limit. Because ADEM has not provided sufficient justification for EPA to determine whether the monitoring is sufficient to assure compliance, EPA grants this claim. 40 C.F.R. § 70.8(c)(3)(ii).

Direction to ADEM: ADEM must revise the permit record and/or permit as necessary to ensure that the synthetic minor limit on NO_x applicable to the 801 and 802 Combustion Turbines is supported by sufficient monitoring requirements.

It appears from ADEM's response that the state is relying on the annual stack testing from subpart KKKK to assure compliance with both NO_x limits. If so, ADEM must explain why these requirements are sufficient to assure compliance with both the subpart KKKK and synthetic minor limits. EPA's guidance on "streamlining" multiple requirements may be relevant to this analysis. *See* White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, 40 (March 5, 1996).

ADEM must also address the Petitioners' comments related to different operating scenarios. EPA notes that the description of the test method itself seems to require testing while the supplemental burner is operating: "For a combined cycle and CHP turbine systems with supplemental heat (duct burner), you must measure the total NOX emissions after the duct burner rather than directly after the turbine. The duct burner must be in operation during the performance test." 40 C.F.R 60.4400(b)(2).
ADEM must also revise the permit record to fully respond to the Petitioners' comments on the frequency of testing. If ADEM determines that additional monitoring is necessary, ADEM must revise the permit and permit record to add and justify such monitoring, again making clear how such monitoring assures compliance with the synthetic minor limit.

Relatedly, EPA also notes that the Kimberly-Clark Final SOB at 7–8 states "For 801 Combustion Turbine and 802 Combustion Turbine, the Title V Permit currently requires continuous monitoring, which satisfies the CAM rule that requires facilities to monitor compliance indicators for emission units to provide reasonable assurance for compliance with regulatory emission limits." The Kimberly-Clark Final Permit, however, seems to lack any provisions for continuous monitoring, and ADEM did not refer to any in its RTC. ADEM should revise the permit and/or permit record as necessary to clarify this apparent discrepancy and ensure that the permit includes all applicable requirements, including any CAM requirements in 40 C.F.R. part 64.

D. Alabama Shipyard

Claim 1.a: The Petitioners Claim That "ADEM Failed to Re-Notice These Permits for Public Comment as Required by the Act and EPA Regulations."

This claim is found within section I.a in the Petition.

Petitioners' Claim: The Petitioners claim that the original SOB accompanying the Alabama Shipyard draft permit lacked information essential for meaningful public review in violation of 40 C.F.R. § 70.7(h)(2) and (a)(5), and ADEM's subsequent addition of information to the

Alabama Shipyard Terminal Final SOB following and in response to public comments required the agency to re-notice the permit, which ADEM failed to do. *See* Petition at 18–20. This claim is identical to Plains Marketing Claim 1.a (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 1.a (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Alabama Shipyard.

Claim 1.b: The Petitioners Claim That "ADEM Did Not Provide the 'Information Necessary to Review Adequately the Proposed Permit' Given the Errors and Inadequacies in the Documents ADEM Provided in Support of These Permits."

This claim is found within section I.b in the Petition.

Petitioners' Claim: The Petitioners claim that the supporting information for the Permits provided by ADEM in the "Public Files" on the EPA Region 4 AL Permit Database was disorganized, unclear, and contained errors, noting that it was particularly difficult to determine if ADEM responded meaningfully to public comments. Petition at 23 (citing 40 C.F.R. §§ 70.8(a)(1) and 70.6(a)). This claim is identical to Plains Marketing Claim 1.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 1.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Alabama Shipyard.

Claim 2.a: The Petitioners Claim That "ADEM Failed to Adequately Respond to Comments Raising Specific Environmental Justice Concerns as Required by Title V."

This claim is found within section II.a in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's *pro forma* response to comments raising specific environmental justice (EJ) concerns does not respond to "the varied, specific, and significant procedural and substantive issues raised in Petitioners' comments" and thus fails to satisfy the requirement of 40 C.F.R. § 70.8(a)(1) to respond meaningfully to all significant public comments. Petition at 31, 33. This claim is identical to Plains Marketing Claim 2.a (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 2.a (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Alabama Shipyard.

Claim 2.b: The Petitioners Claim That "ADEM's Issuance of Eight Permits within One Week – All of Which Involved Significant Comments from Petitioners,

Including Environmental Justice Concerns – Hinders Meaningful Public Participation by Protected Groups in Violation of Title VI."

This claim is found within section II.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's submittal of eight permits within a single week deprived the Petitioners of the opportunity to participate meaningfully in the permitting process by making it difficult for them to assess whether the permits comply with the CAA and AL SIP, and whether ADEM responded to comments sufficiently, amounting to "discrimination on the basis of color" in violation of title VI of the Civil Rights Act. *See* Petition at 38. This claim is identical to Plains Marketing Claim 2.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 2.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Alabama Shipyard.

Claim 3: The Petitioners Claim That "Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit."

This claim is found within section III.b in the Petition.
Petitioners' Claim: The Petitioners claim that ADEM's practice of voiding preconstruction air permits once their requirements are incorporated into title V permits is unlawful. Petition at 48. This claim is identical to Plains Marketing Claim 3 (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 3 (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to Alabama Shipyard.

Claim 4: The Petitioners Claim That "ADEM Erroneously Cited Its Major Source PSD/NSR Permit Program as Its Authority to Create Synthetic Minor VOC Emission Limits."

This claim is found within section III.C.a.iv in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM has not set forth the legal and factual basis for the synthetic minor limits on VOC emissions in the Alabama Shipyard Final Permit as required by 40 C.F.R. § 70.7(a)(5). Petition at 51, 53.

The Petitioners claim that ADEM erroneously cites its major source PSD regulations generally, ADEM Admin. Code r. 335-3-14-.04, as the authority for the synthetic minor limit. *Id.* at 53 (citing Alabama Shipyard Final Permit at 7-2). The Petitioners claim that this citation is incorrect because ADEM did not issue "a synthetic minor construction permit nor … a synthetic minor operating permit, the two types of synthetic minor permits provided for in the SIP." *Id.* at 53–54.

Addressing the Alabama Shipyard RTC and Final SOB, which explained that the synthetic minor limits on VOC emissions in the Alabama Shipyard Final Permit were established in the initial title V permit issued in 2002, the Petitioners claim that ADEM lacks authority to create synthetic minor limits through title V permitting. *See id.* at 54–55 (citing Alabama Shipyard RTC at 2; Alabama Shipyard Final SOB at 2). The Petitioners argue that synthetic minor limits must be permanent and title V permits cannot establish them because they expire. *Id.* at 54.

Finally, the Petitioners also note that the Alabama Shipyard Final SOB is inconsistent regarding HAP emissions—HAP PTE is listed as 30 tpy, but actual HAP emissions are later stated as 40 tpy. *Id.* at 55–56 (citing Alabama Shipyard Final SOB at 2, 4).

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

As explained in EPA's Response to Plains Marketing Claim 4 (in section IV.A of this Order), the regulation that the Petitioners claim ADEM violated—40 C.F.R. § 70.7(a)(5)—pertains only to documents in the permit record (*e.g.*, the statement of basis) and not to any citations of authority in the title V permit itself. The Petitioners' arguments concerning the citation of ADEM's PSD regulations (ADEM Admin. Code r. 335-3-14-.04) in the Alabama Shipyard Final Permit, therefore, fail to demonstrate a violation of 40 C.F.R. § 70.7(a)(5).

As the Petitioners acknowledge, the Alabama Shipyard Final SOB includes additional references to the original title V permit that established the synthetic minor limits on surface coating. *See* Alabama Shipyard Final SOB at 2. ADEM also explained this in its RTC. *See* Alabama Shipyard RTC at 2. To the extent the Petitioners claim that ADEM does not have authority to create synthetic minor limits through its title V program, the Petitioners are incorrect. Title V permits may be used in certain circumstances to establish federally enforceable limits that allow a source to avoid an otherwise applicable requirement.[50] It does not appear, and the Petitioners have not alleged, that the establishment of this limit on VOC PTE in the facility's initial title V permit improperly excluded any other applicable requirements. *E.g.*, the Petitioners have not argued that any construction or modification took place that should have triggered PSD permitting requirements.

It is unclear why the Petitioners intended the apparent discrepancy between potential and actual HAP emissions in the Alabama Shipyard Final SOB to present an additional basis for EPA's objection. Alabama Shipyard is a major source of HAP emissions in either case—whether its PTE is 30 or 40 tpy of HAPs. It is, therefore, unclear how this issue is relevant to whether the title V permit includes all applicable requirements. The Petitioners have not demonstrated that

[50] *See* 40 CFR §§ 70.2 (defining "emissions allowable under the permit" to include, among other things, "a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject"), 70.6(b)(1) (identifying "any provisions designed to limit a source's potential to emit" as a type of title V permit term that would be federally enforceable), 70.7(e)(2)(i)(A)(*4*) (precluding minor permit modification procedures for terms that "establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject"); *see also* 57 FR 32250, 32279 (July 21, 1992) ("Title V permits are an appropriate means by which a source can assume a voluntary limit on emissions for purposes of avoiding being subject to more stringent requirements.").

this apparent discrepancy violated any specific part 70 requirement, and thus have not presented grounds for EPA's objection.

Claim 5: The Petitioners Claim That "The Synthetic Minor PTE Limits Included in the Permits are Inadequate for a Number of Reasons."

This claim is found within section III.C.b.iv in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM failed to respond to comments alleging various problems with the PTE summaries in the draft Alabama Shipyard SOB, (*e.g.*, the SOB lacked: a PTE table, PTE for each emission unit, PTE of individual HAPs, secondary emissions, and fugitive emissions other than PM). *See* Petition at 66–67. The Petitioners assert that the Alabama Shipyard RTC explained that VOC and HAP information was established with the issuance of the original title V permit, but they claim this response is incomplete and that the original title V permit is not available in ADEM's eFile. *Id.* (citing Alabama Shipyard RTC at 2).

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

The Petitioners are incorrect and have not otherwise presented grounds for EPA's objection. ADEM not only responded to comments but also made responsive changes to the Alabama Shipyard Final SOB to include more detailed PTE summaries. *See* Alabama Shipyard RTC at 2 and 5; Alabama Shipyard Final SOB at 2. It is unclear from the Petitioners' claim what more information the Petitioners are requesting. The Petitioners have not demonstrated how any of this potential information is relevant to any specific permit terms or any other way in which the permit, permit record, or permit process did not comply with the Act or implementing regulations. 40 C.F.R. § 70.12(a)(2).[51]

Claim 6: The Petitioners Claim That "The Permits fail to include the Monitoring, Recordkeeping and Reporting Necessary for Those Limits to Comply with the Act."

This claim is found within section III.C.c.iv in the Petition.

Petitioners' Claim: The Petitioners claim that the monitoring, reporting, and recordkeeping requirements in the Alabama Shipyard Final Permit do not assure compliance with the facility-wide synthetic minor limit on VOC emissions as required by C.F.R. § 70.6(a)(3). Petition at 77.

The Petitioners claim that the facility-wide synthetic minor limit of 245 tpy for VOC emissions is unenforceable because the permit does not include "Plantwide Emission Limits (PALs) required for such facility-wide limits." *Id.* (citing 40 C.F.R. § 52.21 (aa)(6)(i)).

The Petitioners also claim that ADEM's failure to explain the relationship between "throughput of products allowed by the permit, PTE, the emission limitations, and calculations" violates the requirement under 40 C.F.R. § 70.7(a)(5) to provide the necessary basis for the limit in the SOB.

[51] EPA encourages ADEM to ensure that all relevant parts of the permit record are available to the public, especially any permits mentioned in responses to public comments or statements of basis.

Id. The Petitioners allege that ADEM's response to comments regarding the relationship between throughput limits and VOC PTE, in which ADEM references the 2002 title V permit where the limit was evaluated and established, is inadequate because that 2002 permit is not available. *Id.* at 78 (citing Alabama Shipyard RTC at 3). The Petitioners claim this omission leaves the permit record devoid of any document "providing a correlation between the throughput and the PTE limit." *Id.*

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

As with all permitting decisions, a petitioner challenging monitoring, recordkeeping, and reporting requirements must demonstrate why those requirements do not assure compliance with specific permit terms to present grounds for EPA's objection. 40 C.F.R. § 70.12(a)(2)(i)–(iii).[52] The Petitioners' general allegations concerning the monitoring, recordkeeping, and reporting requirements related to the facility-wide synthetic minor limit on VOC emissions in the Alabama Shipyard Final Permit do not meet this standard. The Petitioners provide no analysis or support for their claim that these requirements are inadequate. The Petitioners have not demonstrated that ADEM's justifications of the permit terms related to the synthetic minor limit are incorrect or insufficient. 40 C.F.R. § 70.12(a)(2)(vi).[53] ADEM states:

> The permit limit for VOCs is quantifiable and practically enforceable, as the permit requires the facility to calculate the 12-month rolling total of emissions each calendar month. The facility calculates these emissions by utilizing the vendor data of the material used during the calendar month. Alabama Shipyard is required to report these emissions to the Department on a quarterly basis. This data is available for the public's review on the Department's eFile system. Furthermore, Alabama Shipyard is required by the permit to retain records for at least the last five years of more specific VOC characteristics and usage information. Department personnel reviews this data during each annual inspection. Since the facility conservatively estimates that all VOCs applied are emitted, the Department has determined that the required reporting and recordkeeping requirements are a sufficient method to demonstrate compliance with the limits.

Alabama Shipyard RTC at 3.

The Petitioners have not demonstrated that the source has a PAL or is required to have one. It seems that the Petitioners misunderstand that a PAL is a *voluntary* limit on facility-wide emissions that may enable a source to avoid triggering major NSR review when making modifications. *See* 67 FR 80208 (December 31, 2002). Not all synthetic minor limits, even if they apply to an entire facility, are PALs or need to follow the specific requirements for PALs.

It is not clear how the Petitioners' claims about product throughput and correlation to PTE are relevant to the facility-wide limit on VOC emissions. This limit does not restrict product throughput as the Petitioners suggest. Rather, it is an emissions limit. In order to demonstrate

[52] *See supra* notes 6–8 and accompanying text.
[53] *See supra* note 9 and accompanying text.

compliance with the emissions limit, the facility must keep records of "vendor data and the amount of VOC containing material used," and each calendar month calculate VOC emissions using this information, assuming that all VOCs applied are emitted. Alabama Shipyard RTC at 3. This type of emission limit—on VOC emissions from surface coating operations—is precisely a type of limit that EPA has previously explained can suffice to restrict PTE without any accompanying operational or production limit. *See* Terrell E. Hunt and John S. Seitz, EPA, *Guidance on Limiting Potential to Emit in New Source Permitting* at 8 (June 13, 1989). To the extent the Petitioners argue that ADEM failed to respond to comments on this issue, they are incorrect. ADEM provided several responses describing the compliance demonstration requirements in the permit. *See* Alabama Shipyard RTC at 3. Again, the Petitioners have not demonstrated that those responses were insufficient.

Claim 7: The Petitioners Claim That "EPA Must Object and Direct ADEM to Include the Required Credible Evidence Requirements in the Alabama Shipyard Final Title V Permit."

This claim is found within section III.C.d.ii.1 in the Petition.

Petitioners' Claim: The Petitioners claim that Alabama's SIP and EPA's Part 70 rules both include a regulation for use of any credible evidence for purposes of enforcement. Petition at 82 (citing ADEM Admin. Code r. 335-3-1-.13([2]); 40 C.F.R. § 70.6(c)(5)(iii)(b)).[54] The Petitioners characterize this regulation as an applicable requirement that must be included, but is missing from, the Alabama Shipyard Final Permit. *See id.* at 82–83.

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

ADEM correctly stated in its RTC that "The Department has the ability to use credible evidence of a violation when enforcing the terms and conditions of the permit. Its explicit inclusion in the permit is not necessary." Alabama Shipyard RTC at 5. The regulations concerning the use of credible evidence in enforcement are not applicable requirements for sources that must be included in title V permits. As EPA has previously explained:

> Consistent with the CAA, the EPA, states, and citizens can use any credible evidence to prove compliance and non-compliance with the CAA, including compliance and non-compliance with title V permits. *See* Credible Evidence Revisions, 62 Fed. Reg. 83 14, 8318 (February 24, 1997). The CAA authorizes the EPA, states, and citizens to bring enforcement actions against a source for violation of any requirement or prohibition of an applicable implementation plan or permit, including a title V permit. 42 U.S.C. §§ 7413(a), 7604(a)(1), 7604(f)(4). Section 113(e) of the CAA specifically authorizes the use of "any credible evidence" in federal enforcement and citizen suits. 42 U.S.C. § 7413(e). . . . Because the authority to use credible evidence is found in the CAA, the absence of language

[54] Petitioners' citation to "ADEM Admin. Code r. 335-3-1-.13(3)" is likely a typographical error, as "ADEM Admin. Code r. 335-3-1-.13(3)" does not exist..

> regarding the use of credible evidence in a title V permit does not preclude its use in demonstrating compliance."

In the Matter of Southwestern Electric Power Company, H.W. Pirkey Power Plant, Order on Petition No. VI-2014-01 at 13 (February 3, 2016); *see also In the Matter of Motiva Enterprises* Order on Petition No. II-2002-05 at 11 (September 24, 2004); *In the Matter of Louisiana Pacific Corporation,* Order on Petition No. V-2006-3 at 11–12 (November 5, 2007).

The Petitioners' claim, therefore, presents no basis for EPA's objection.

> **Claim 8: The Petitioners Claim That "EPA Must Object and Direct ADEM to Include the Most Recent NESHAP Compliance Plan in the Alabama Shipyard Final Title V Permit."**

This claim is found within section III.C.d.ii.2 in the Petition.

Petitioners' Claim: The Petitioners claim that the Alabama Shipyard Final Permit lacks an implementation plan, required by 40 C.F.R. § 63.787(b), that was updated in October 2020 and attached to the permit application—the NESHAP for National Emission Standards for Shipbuilding and Ship Repair. Petition at 83 (citing 40 C.F.R. § 70.6(a)(1)).

The Petitioners cite several EPA orders[55] in support of their assertion that the implementation plan must be included in the Alabama Shipyard Final Permit because the applicable requirement requires the source to operate in accordance with the plan. *Id.* n.289.

In rebuttal to ADEM's response to their comments, where ADEM explained that "[t]he original NESHAP Implementation Plan was submitted in 2006 and is not required to be resubmitted," the Petitioners claim that the permit application included a 2020 update to the earlier plan, and that 2020 update must be included in the Alabama Shipyard Final Permit. *Id.* (quoting Alabama Shipyard RTC at 6).

EPA's Response: For the following reasons, EPA grants the Petitioners' request for an objection on this claim.

EPA has addressed the inclusion of plans in title V permits in multiple previous orders. To summarize EPA's position, only plans (or portions of plans) that are necessary to impose an applicable requirement or assure compliance with an applicable requirement need be included (or incorporated) in a title V permit. *See* CAA § 504(a), (c); 40 C.F.R. §§ 70.5(c), 70.6(a)(1), 70.6(c)(1); *ABC Coke Order* at 13–15.[56] The underlying question—whether the provisions of a

[55] *In the matter of CF&I Steel, L.P. dba EVRAZ Rocky Mountain Steel,* Order on Petition No. VIII-2011-01 at 7 (May 31, 2012) (*Rocky Mountain Steel Order*); *In the matter of Alliant Energy - EP L Edgewater Generating Station,* Order on Petition No. V-2009-2 at 13–14 (Aug. 17, 2010) (*Edgewater Order*) (determining that a plan must be included in a title V permit where compliance with the plan was required by the applicable requirement, or where the plan was necessary to demonstrate compliance with a permit limit).

[56] *See also Valero Houston Order* at 25–26; *Kentucky Syngas Order* at 11–14; *Cash Creek II Order* at 11–12; *Rocky Mountain Steel Order* at 7–8; *Edgewater Order* at 12–14; *In the Matter of WE Energies Oak Creek Power Plant,* Order on Petition, Permit No. 241007690-P10 at 24–25 (June 12, 2009) (*Oak Creek Order*).

plan must be included in a facility's title V permit—is a fact-specific inquiry and the petitioner has the burden to demonstrate under the facts specific to that plan that it must be included in the permit. For example, EPA has granted claims where petitioners claimed and demonstrated that certain plans "define[d] permit terms" and that the permit relied on other plans "to assure compliance with applicable requirements." *Oak Creek Order* at 24, 25.

The results of EPA's evaluation in previous cases have often depended on the nature of the specific plans at issue. *See, e.g., Cash Creek II Order* at 11 ("EPA's decision on this issue is based on the role of the operation plan requirement in this particular permit."); *Edgewater Order* at 12 (basing EPA's decision on, among other things, "the specific facts relevant to each of the plans required in the . . . permit"). EPA has granted claims, for example, where a specific NESHAP required the source to "prepare *and implement*" a plan related to electric arc furnaces, *Rocky Mountain Steel Order* at 7 (emphasis added), and where a malfunction prevention plan provided the "means of demonstrating and monitoring compliance with the PM limit." *Oak Creek Order* at 26.

Here, the Petitioners have demonstrated that the contents of the NESHAP implementation plan are necessary to assure compliance with an applicable requirement, and therefore must either be included in the Alabama Shipyard Final Permit or incorporated by reference. As the Petitioners point out, the plan must contain "compliance procedures" for assuring compliance with requirements under 40 C.F.R. § 63.785(c), 63.788, and 63.783(b). 40 C.F.R. § 63.787(b)(3); *see* Petition at 83 n.289.

In responding to the Petitioners' comments on this issue, ADEM explained only that "[t]he original NESHAP Implementation Plan was submitted in 2006 and is not required to be resubmitted. A copy of this plan can be found in the facility's records on the Department's eFile system with the latest application." Alabama Shipyard RTC at 6. It seems that ADEM only responded to a portion of the Petitioners' comments, the portion addressing the (one-time) requirement to submit the implementation plan in 40 C.F.R. § 63.787(b)(1)(ii). ADEM failed to respond to the portion of the Petitioners' significant comments concerning the inclusion of the updated plan in the title V permit. 40 C.F.R. § 70.7(h)(6). The permit record is, therefore, inadequate for EPA to determine whether the Alabama Shipyard Final Permit assures compliance with all applicable requirements. 40 C.F.R § 70.8(c)(3)(ii).

Direction to ADEM: ADEM must revise the permit record and/or permit as necessary to adequately respond to the Petitioners' comments on the NESHAP implementation plan and ensure that the necessary elements of the plan have been included in the title V permit. ADEM must either explain that the necessary elements of the plan have been included in the permit, referencing the permit conditions that do so, or revise the permit to include or incorporate the necessary elements of the plan by reference, if ADEM determines they have not been included.

Claim 9: The Petitioners Claim That "EPA Must Object Because the Alabama Shipyard Permit Lacks Sufficient Monitoring for the PM Emission Limits."

The following five claims (numbered 9.a–e in this Order) are subclaims of an overarching claim the Petitioners label III.C.d.ii.3 and title "EPA must object because the Alabama Shipyard Permit

lacks sufficient monitoring for the PM emission limits." Petition at 84. These claims involve distinct issues and so are separated here and addressed individually.

Claim 9.a

Claim 9.a is found within section III.C.d.ii.3(1) in the Petition.

Petitioners' Claim: The Petitioners claim that monitoring provisions for the Indoor Blasting Unit and Shape Blasting Line lack certain requirements of EPA's Method 9, specifically "the required training and certification" for the "person observing potential opacity violations." Petition at 84.

The Petitioners note that the provisions merely require '"someone familiar with Method 9' to conduct this monitoring." *Id.* (quoting Alabama Shipyard Final Permit at 2-2 and 6-2). The Petitioners also claim that ADEM failed to respond to comments on this issue. *Id.*

EPA's Response: For the following reasons, EPA grants the Petitioners' request for an objection on this claim.

In the Alabama Shipyard Final Permit, the "Compliance and Performance Test Methods and Procedures" for the Indoor Blasting Unit and Shape Blasting Line state, "Visible emissions shall be determined using Method 9 of 40 CFR 60 Appendix A." *E.g.,* Alabama Shipyard Permit at 2-2. The "Emission Monitoring" requirements for the same units, however, state "Visible emissions shall be monitored on a weekly basis when this source is operating *by someone familiar with* Method 9 of 40 CFR 60 Appendix A." *Id.* (emphasis added).

EPA's Method 9, as described in 40 CFR 60 Appendix A, states "[t]his method involves the determination of plume opacity by *qualified observers*" (emphasis added) and includes certification requirements for those qualified observers. It is, therefore, unclear why the permit terms for the Indoor Blasting Unit and the Shape Blasting Line refer ambiguously to "someone familiar with Method 9." ADEM failed to clarify this ambiguity in its response to the Petitioners' comments on this issue. *See* Alabama Shipyard RTC at 4. The permit record is, therefore, inadequate for EPA to determine whether these monitoring requirements assure compliance with the opacity limits applicable to these units. 40 C.F.R § 70.8(c)(3)(ii).

Direction to ADEM: ADEM must revise the permit to resolve the apparent conflict between the "Compliance and Performance Test Methods and Procedures" and the "Emission Monitoring" terms for the Indoor Blasting Unit and the Shape Blasting Line.[57] ADEM should either remove the phrase "someone familiar with Method 9" from the monitoring terms, as this would remove the ambiguity and require the facility to follow all Method 9 requirements (Method 9 itself contains the requirements for certification). Or, if ADEM did not intend Method 9 to be the compliance assurance procedure, ADEM must specify a different test method which does not require certification (*e.g.,* Method 22).

[57] EPA notes that the permit terms for the Indoor Blasting Machine are similarly in conflict, and ADEM should revise these as well.

Claim 9.b

Claim 9.b is found within section III.C.d.ii.3(2) in the Petition.

Petitioners' Claim: The Petitioners claim that the Alabama Shipyard Final Permit lacks recordkeeping and reporting requirements related to EPA's Method 9 for three emission units. Petition at 84–85. Specifically, the Petitioners claim that the Alabama Shipyard Final Permit lacks reporting requirements for the Indoor Blasting Unit, and both recordkeeping and reporting requirements for the Indoor Blasting Machine and the Shape Blasting Line. *Id.* The Petitioners also claim that ADEM failed to respond to comments on this issue. *Id.* 85.

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

The Petitioners have not demonstrated that the recordkeeping and reporting requirements related to monitoring via Method 9 for the Indoor Blasting Unit, Indoor Blasting Machine, and Shape Blasting Line are insufficient to assure compliance with any applicable requirement. Contrary to the Petitioners' claim, the Alabama Shipyard Final Permit does include recordkeeping and reporting requirements for the monitoring via Method 9. *See* Alabama Shipyard Final Permit at 0-7, 2-2, 4-3, and 6-3. ADEM did respond to these comments, summarizing the recordkeeping and reporting requirements. *See* Alabama Shipyard RTC at 4. The Petitioners present no analysis of the recordkeeping and reporting requirements to show any inadequacy in their terms, nor do they address ADEM's response to their comments regarding the recordkeeping and reporting requirements. 40 C.F.R. § 70.12(a)(2)(iii), (vi).[58] Thus, the Petitioners do not demonstrate a basis for EPA's objection.

Claim 9.c

Claim 9.c is found within section III.C.d.ii.3(3) in the Petition.

Petitioners' Claim: The Petitioners claim that the Alabama Shipyard Final Permit lacks "work practice provisos" for baghouse maintenance and repair for three emission units—the Indoor Blasting Unit, Indoor Blasting Machine, and Shape Blasting Line—and that ADEM failed to respond to comments on this issue. Petition at 85.[59] The Petitioners note that the Alabama Shipyard Final SOB mentions inspections of the baghouse for the Indoor Blasting Unit, but claim that these terms are unenforceable because they are not included in the Alabama Shipyard Final Permit. *Id.* The Petitioners argue that "work practice provisions for the baghouses are essential to ensure that the . . . three emission units control the dust and particulate matter emissions." *Id.*

EPA's Response: For the following reasons, EPA grants the Petitioners' request for an objection on this claim.

[58] *See supra* notes 6–9 and accompanying text.
[59] The Petitioners refer to the units by their descriptions.

40 C.F.R. § 70.7(h)(6) expressly requires permitting authorities to respond to all significant public comments. Comments questioning the lack of work practice requirements for baghouse maintenance and repair are clearly related to whether the baghouses will continue to operate properly and assure compliance with the PM emission limits applicable to the emission units at issue. Here, ADEM responded to the Petitioners' comments requesting information about the baghouses, by referring them to the permit application, but failed to respond to the significant comments alleging the lack of maintenance and repair permit terms. *See* Alabama Shipyard RTC at 3.

Direction to ADEM: ADEM must revise the permit record and/or permit as necessary to respond to the Petitioners' comments on work practice provisos for baghouse maintenance and repair. If any of the general conditions in the Alabama Shipyard Final Permit are relevant to this issue (*e.g.*, General Proviso 16 for Operation of Capture and Control Devices), ADEM should so state in its response. ADEM should also clarify the apparent conflict between the Alabama Shipyard Final SOB and Final Permit concerning inspections of the baghouse for the Indoor Blasting Unit. *See* Alabama Shipyard Final SOB at 3 ("The baghouse shall be inspected at least annually, and whenever emissions are observed."). If ADEM has determined these inspections are necessary to assure compliance with applicable requirements, then ADEM should revise the permit to include them.[60]

Claim 9.d

Claim 9.d is found within section III.C.d.ii.3(4) in the Petition.

Petitioners' Claim: The Petitioners claim that the Alabama Shipyard Final Permit fails to specify how frequently the source must demonstrate compliance via Method 5 and lacks corresponding recordkeeping and reporting requirements for the Indoor Blasting Unit, Indoor Blasting Machine, and Shape Blasting Line. Petition at 86. The Petitioners also claim that the Alabama Shipyard Final SOB is in conflict with the permit terms because it states that no monitoring is required. *Id*.[61]

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

The Petitioners have not demonstrated that the permit terms for test methods, monitoring, or recordkeeping and reporting related to Method 5 fail to assure compliance with any applicable requirement. Given ADEM's explanation, presented in its RTC, that testing via method 5 is not actually required "due to the low rate of emissions expected," the Petitioners' claims about the frequency of testing are irrelevant. Alabama Shipyard RTC at 4. The Petitioners do not cite any emission limit or any permit term related to Method 5 and present no analysis for why the state's reasoning is inadequate, and thus present no grounds for EPA's objection. 40 C.F.R. § 70.12(a)(2)(i), (vi).[62]

[60] EPA also notes that it is unclear whether the Alabama Shipyard Final Permit should include CAM requirements related to these baghouses pursuant to 40 C.F.R. § 64.6(c). In considering the work practice provisos, ADEM should ensure that the title V permit also contains all the necessary requirements, if any, related to CAM.
[61] The Petitioners appear to quote the Alabama Shipyard RTC (at 4) not SOB as they state.
[62] *See supra* notes 6–9 and accompanying text.

Claim 9.e

Claim 9.e is found within section III.C.d.ii.3(5) in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM failed to respond to comments requesting additional information about the Open Air Grit Blasting operations (*e.g.*, what type of grit is allowed, how throughput of material corresponds to emissions, how tons of grit are measured, and how an annual limit assures compliance with the short-term PM NAAQS). Petition at 86. The Petitioners claim that ADEM's RTC simply refers to Appendix E of the permit application but does not respond to any specific issues. *Id.* at 86–87. The Petitioners conclude by asserting "[t]he Permit must specify the types of materials allowed, and ADEM must explain what assumptions and calculations it used to determine emissions and how those results ensure compliance with the PM NAAQS." *Id.* at 87.

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

The Petitioners have not demonstrated that the permit terms for the Open Air Grit Blasting fail to assure compliance with any applicable requirement. The Petitioners fail to cite any permit term or present any analysis for why the information they list is necessary to be in the permit. 40 C.F.R. § 70.12(a)(2)(i)–(iii).[63] The NAAQS are not applicable requirements with which a source itself must directly comply.[64] More specific SIP provisions may impose obligations on individual sources relevant to the NAAQS, but the Open Air Grit Blasting does not appear to be subject to any such requirements in the Alabama Shipyard Final Permit. ADEM did respond to the Petitioners' comments, referring them to the location in the permit application where the requested information can be found. *See* Alabama Shipyard RTC at 5. The Petitioners have not made clear how any additional explanation would have been relevant to whether the permit assures compliance with all applicable requirements, and thus present no grounds for EPA's objection.

E. UOP

Claim 1.a: The Petitioners Claim That "ADEM Failed to Re-Notice These Permits for Public Comment as Required by the Act and EPA Regulations."

This claim is found within section I.a in the Petition. Although Claim 1.a covers all five permits in the Petition,[65] the Petitioners present distinct arguments for the UOP permitting action, which are separately addressed here.

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[63] *See supra* notes 6–8 and accompanying text.

[64] *See* 40 CFR 70.2 (definition of "applicable requirement"); 57 Fed. Reg. at 32276 ("Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source.); 56 Fed. Reg. at 21732–33 ("The EPA does not interpret compliance with the NAAQS to be an 'applicable requirement' of the Act."); *e.g., In the Matter of Lucid Energy Delaware, LLC, Frac Cat Compressor Station* Order on Petition Nos. VI-2022-5 & VI-2022-11 at 13 (November 16, 2022); *In the Matter of Alabama Power Company, Barry Generating Plant,* Order on Petition No. IV-2021-5 at 11 (June 14, 2022).

[65] *See supra* Plains Marketing Claim 1.a in section IV.A of this Order.

Petitioners' Claim: The Petitioners claim that ADEM's revisions to the 2021 UOP Permit in response to EPA's objections in the *UOP Order* cannot be considered a minor modification, and therefore require public notice and comment. *See* Petition at 21–22.

The Petitioners claim that ADEM added over twelve pages of information essential for public review to the UOP Updated SOB that should have been available during the initial public comment period. The Petitioners assert that, therefore, the UOP Final Permit was required to be noticed for public comment during the current permitting action. *Id.* at 21.

The Petitioners claim that Alabama's title V rules require permits to be reopened with public notice and comment following EPA determining that the permit contains a material mistake or inaccurate statements were made in establishing its terms. *Id.* (citing ADEM Admin. Code r. 335-3-16-.13(5)). Petitioners note that EPA found that the permit record was inadequate with regard to the basis for several permit terms. *Id.* at 21–22 (citing *UOP Order* at 10, 11, 13–14, 15). The Petitioners interpret ADEM's responsive additions to the SOB and RTC as corrections of mistakes (*i.e.*, the absence of required information), and ADEM's revisions to the 2021 UOP Permit as evidence of inaccurate statements (*i.e.*, citations to inaccurate regulatory provisions). *Id.* at 22 (citing UOP Response Cover Letter at 2).

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

In responding to an order to resolve an EPA objection to a finalized permit, a permitting authority determines whether its response is a minor modification or a significant modification to the title V permit, based on the regulatory criteria dictating which procedure is appropriate and/or required. *See* ADEM Admin. Code r. 335-3-16-.13; 40 C.F.R. § 70.7(e)(2) and (4).

Here, in responding to EPA's objection to the 2021 UOP Permit, ADEM issued a minor modification to the UOP title V permit. ADEM added information to the permit's statement of basis and response to public comments consisting of: the attainment status of the county, numerous references to originating construction permits, and lengthy justifications of monitoring, recordkeeping, and reporting requirements. *See* UOP Response Cover Letter. ADEM also revised the permit, modifying references to regulations providing the authority for certain synthetic minor limits (adding more specificity to the references) and removing alternative test methods related to opacity, PM, and SO_2 monitoring requirements. *See id.*

The Petitioners have not demonstrated that any of these changes are inconsistent with the criteria of a minor modification in 40 C.F.R. § 70.7(e)(2)(i). Indeed, the Petitioners do not address those criteria.

Instead, the Petitioners analyze ADEM's changes to the permit and permit record in relation to ADEM's regulation specifying conditions for reopening a title V permit for cause—ADEM Admin. Code r. 335-3-16-.13(5). *See also* 42 U.S.C. §7661d(e); 40 C.F.R. § 70.7(f), (g). Those regulations are not relevant to the current permitting action. Neither ADEM nor EPA reopened the 2021 UOP Permit for cause. Rather, EPA objected to the 2021 UOP Permit under its

authority in CAA § 505(b)(2); 40 C.F.R. § 70.8(d). Overall, the Petitioners have not demonstrated that the relevant regulations required ADEM to process the changes to the UOP Final Permit and permit record using significant modification procedures.

Claim 1.b: The Petitioners Claim That "ADEM Did Not Provide the 'Information Necessary to Review Adequately the Proposed Permit' Given the Errors and Inadequacies in the Documents ADEM Provided in Support of These Permits."

This claim is found within section I.b in the Petition.

Petitioners' Claim: The Petitioners claim that the supporting information for the Permits provided by ADEM in the "Public Files" on the EPA Region 4 AL Permit Database was disorganized, unclear, and contained errors, noting that it was particularly difficult to determine if ADEM responded meaningfully to public comments. Petition at 23 (citing 40 C.F.R. §§ 70.8(a)(1) and 70.6(a)). This claim is identical to Plains Marketing Claim 1.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 1.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to UOP.

Claim 2.a: The Petitioners Claim That "ADEM Failed to Adequately Respond to Comments Raising Specific Environmental Justice Concerns as Required by Title V."

This claim is found within section II.a in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's *pro forma* response to comments raising specific environmental justice (EJ) concerns does not respond to "the varied, specific, and significant procedural and substantive issues raised in Petitioners' comments" and thus fails to satisfy the requirement of 40 C.F.R. § 70.8(a)(1) to respond meaningfully to all significant public comments. Petition at 31, 33. This claim is identical to Plains Marketing Claim 2.a (in section IV.A of this Order).

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

Since EPA first promulgated regulations governing the title V program in 1992, it has limited the scope of petitions on permit revisions to issues that are directly related to the permit revision—*i.e.*, to portions of the permit being changed. *See In the Matter of Wisconsin Public Service Corporation – Weston Generating Station*, Order on Petition No. V-2006-4 at 5–7 (December

19, 2007) (*Weston Order*).[66] In addition to permit revisions initiated by a source or state, this principle also applies to permit revisions required by an EPA objection. If EPA objects to a permit in response to a petition (as in this case), then the state's response to EPA's objection typically involves a new permit action consisting of a narrowly targeted permit revision. Only the revised permit terms are subject to additional petition challenges. *See Hu Honua II Order* at 38–41.

Here, in response to EPA's objection in the *UOP Order*, ADEM issued a minor modification. Consistent with ADEM's regulations, this minor modification did not involve public notice or a public comment period. Accordingly, there were no comments on this permit action, nor any obligation for ADEM to respond to comments. Thus, ADEM's alleged failure to respond to comments is simply not relevant to EPA's review of the present permit modification.

This claim appears to refer to comments raised on a prior (2021) permit action. If the Petitioners believed that ADEM did not adequately respond to prior comments relating to EJ, the Petitioners could have raised those concerns in a petition challenging that prior permit. However, as the Petitioners acknowledge, the prior petition (filed by one of the Petitioners) did not include any such challenges. Petition at 32 n.102. The Petitioners cannot now challenge ADEM's alleged failure to respond to comments during that prior permitting action.[67]

Claim 2.b: The Petitioners Claim That "ADEM's Issuance of Eight Permits within One Week – All of Which Involved Significant Comments from Petitioners, Including Environmental Justice Concerns – Hinders Meaningful Public Participation by Protected Groups in Violation of Title VI."

This claim is found within section II.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's submittal of eight permits within a single week deprived the Petitioners of the opportunity to participate meaningfully in the permitting process by making it difficult for them to assess whether the permits comply with the CAA and AL SIP, and whether ADEM responded to comments sufficiently, amounting to

[66] As explained in more depth in the *Weston Order*, this position is based on multiple provisions within the CAA and EPA's part 70 regulations and dates back to statements made in the preamble to the initial part 70 rules. *See* 57 Fed. Reg. 32250, 32289–90 (July 21, 1992) ("Public objections to a draft permit, permit revision, or permit renewal must be germane to the applicable requirements implicated by the permit action in question. For example, objections addressed to portions of an existing permit that would no way be affected by a proposed permit revision would not be germane."); *see also* 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.7(a)(1), (a)(5), (e)(4)(ii), (h)(2). EPA has consistently applied this policy. *See In the Matter Tennessee Valley Authority, Shawnee Fossil Plant*, Order on Petition No. IV-2011-1 at 5–7 (August 31, 2012); *In the Matter of Wisconsin Public Service Corporation's JP Pulliam Power Plant*, Order on Petition No. V-2012-01 at 8–9 (January 7, 2013); *In the Matter of Consolidated Environmental Management, Inc. – Nucor Steel*, Order on Petition Nos. VI-2010-05, VI- 2011-06 & VI-2012-07 at 66–67 (January 30, 2014); *Hu Honua II Order* at 38–40; *In the Matter of AK Steel Dearborn Works*, Order On Petition No. V-2016-16 at 18 n.33 (January 15, 2021). *In the Matter of BP Products North America, Inc., Whiting Business Unit*, Order on Petition No. V-2021-9 at 8–10 (March 4, 2022).

[67] Even if this claim were within the scope of EPA's review, it would not present a basis for EPA's objection for the reasons explained in EPA's response to Plains Marketing Claim 2.a (in section IV.A of this Order).

"discrimination on the basis of color" in violation of title VI of the Civil Rights Act. *See* Petition at 38. This claim is identical to Plains Marketing Claim 2.b (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 2.b (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to UOP.

Claim 3: The Petitioners Claim That "Underlying Title I Permits are NOT Voided by Issuance of a Title V Permit."

This claim is found within section III.b in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM's practice of voiding preconstruction air permits once their requirements are incorporated into title V permits is unlawful. Petition at 48. This claim is identical to Plains Marketing Claim 3 (in section IV.A of this Order).

EPA's Response: For the reasons explained in EPA's response to Plains Marketing Claim 3 (in section IV.A of this Order), EPA denies the Petitioners' request for an objection on this claim. All of the arguments presented there with regard to Plains Marketing are equally applicable to this claim with regard to UOP.

Claim 4: The Petitioners Claim That "ADEM Erroneously Cited Its Major Source PSD/NSR Permit Program as Its Authority to Create Synthetic Minor VOC Emission Limits."

This claim is found within section III.C.a.v in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM has not set forth the legal and factual basis for many synthetic minor limits[68] on PM and SO_2 emissions in the UOP Final Permit as required by 40 C.F.R. § 70.7(a)(5). Petition at 56.

Although the Petitioners acknowledge that ADEM, in response to the *UOP Order*, added citations to the UOP Updated SOB to the relevant NSR air permits that established the limits, they claim that the UOP Final Permit still erroneously references ADEM Admin. Code r. 335-3-14-.04, and that ADEM failed to explain this authority. *Id.* at 56–57.

Additionally, the Petitioners allege that because "ADEM failed to use the appropriate authority to create the synthetic minor emission limits in the UOP Permit," it fails to assure compliance with PSD requirements for PM and SO_2.

[68] The Petitioners refer generally to "the Information Summary pages of the UOP 2021 Final Permit, which are provided on the first page (x-1) of the sections addressing specific permit requirements for all emitting units at the facility. None of these pages appear in ADEM's 2022 Final Permit, and thus remain unchanged." Petition at 56 n.195. The Petitioners specifically cite the Informational Summary for the Steam General Boilers (UOP 2021 Final Permit at 1-1), the Informational Summary for the General Material Handling (UOP 2021 Final Permit at 2-1), and Applicability Proviso 4 for the MPI Process (UOP 2022 Final Permit at 5-2). *Id.*

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

As explained in EPA's Response to Plains Marketing Claim 4 (in section IV.A of this Order), the regulation that the Petitioners claim ADEM violated—40 C.F.R. § 70.7(a)(5)—pertains only to documents in the permit record (*e.g.*, the statement of basis) and not to any citations of authority in the title V permit itself. In resolving EPA's objection to Claim 4 in the *UOP Order,* ADEM added references to the original air permits and engineering analyses that established the numerous synthetic minor limits in the UOP Permit, as ADEM explained in its updated RTC addressing this issue, and as the Petitioners acknowledge. *See* UOP Updated RTC at 8; Petition at 56. The Petitioners' arguments, focusing narrowly on the citations in the UOP Final Permit, fail to demonstrate that ADEM did not satisfy the requirements of 40 C.F.R. § 70.7(a)(5).

To the extent the Petitioners suggest that an allegedly incorrect citation of authority would somehow automatically render the synthetic minor limits ineffective to restrict PTE, and accordingly, that the corresponding modifications should have triggered PSD permitting, the Petitioners are incorrect. Whether the permit record satisfies 40 C.F.R. § 70.7(a)(5) is distinct from whether the underlying synthetic minor limits are effective and whether the source or modification at issue received the appropriate preconstruction permit. The Petitioners have not demonstrated a basis for objection related to either issue.

Claim 5: The Petitioners Claim That "The Synthetic Minor PTE Limits Included in the Permits are Inadequate for a Number of Reasons."

This claim is found within section III.C.b.v in the Petition.

Petitioners' Claim: The Petitioners claim that ADEM failed to respond to comments alleging the inappropriate use of AP-42 emission factors that underestimate emissions. *See* Petition at 67 (citing comments on the UOP 2021 Final Permit). The Petitioners claim that ADEM did not "explain how use of emission factors does not underestimate emissions" and note that ADEM did not change its response on this issue in addressing the objections in the *UOP Order*. *Id.* (citing UOP Updated RTC at 5).

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

As explained in EPA's response to UOP Claim 2.a, only issues that are directly related to the current permit revision (*i.e.*, the minor modification ADEM issued in response to EPA's objection in the *UOP Order*) are subject to petition challenges.[69] There were no comments on this permit action to which ADEM was obligated to respond. Thus, ADEM's alleged failure to respond to comments is simply not relevant to EPA's review of the present permit modification. Instead, this claim appears related to comments raised on the prior 2021 permit action. If the Petitioners believed that ADEM did not adequately respond to prior comments relating to AP-42 emission factors, the Petitioners could have raised those concerns in a petition challenging that

[69] *See supra* note 66 and accompanying text.

prior permit. However, the prior petition (filed by one of the Petitioners) did not include any such challenges. The Petitioners cannot now challenge ADEM's alleged failure to respond to comments during that prior permitting action.

To the extent the Petitioners challenge ADEM's use of AP-42 emission factors in justifying monitoring requirements related to specific emission limits that are within the scope of the current permit revision, EPA responds to those issues in UOP Claim 6, immediately below.

Claim 6: The Petitioners Claim That "EPA Must Deny the UOP Permit, or in the Alternative Issue an Objection, Because ADEM's Response Fails to Address All of the Objections and Related Deficiencies Identified in the *UOP Order*."

This claim is found within sections III.C.c.v and III.C.d.iii in the Petition; the former is an abbreviated version of the latter. Both claims are addressed together here.

Petitioners' Claim: The Petitioners claim that ADEM's additions to the UOP Updated RTC and Updated SOB in response to EPA's objections in the *UOP Order* are insufficient to justify the monitoring, recordkeeping, and reporting requirements associated with many PM, opacity, and SO_2 limits, which the Petitioners allege are still inadequate and unchanged. *See* Petition at 79, 87–93. The Petitioners argue that EPA must deny the UOP Final Permit according to 42 U.S.C. § 7761d(c) and 40 C.F.R. § 70.8(c)(4), or alternatively, object to the permit once again. Petition at 88, 91.[70]

Although the Petitioners do not specifically enumerate their arguments, they make several separate allegations within this overarching claim concerning ADEM's response to EPA's objections in the *UOP Order*. *See id* at 79, 87–93.

The Petitioners first claim that ADEM relied on inappropriate AP-42 emission factors to estimate potential emissions and set synthetic minor limits on PM and SO_2 for many emission units at the facility. *Id.* at 89. Similar to Claim 5 above, the Petitioners allege that ADEM failed to respond to comments and "explain how use of those factors supported the specific emission limits in the permit." *Id.*

Next, the Petitioners claim ADEM's responses to EPA's objections still fail to address how infrequent monitoring can assure compliance with hourly limits. *See id.* at 89–91. The Petitioners summarize the limits and monitoring requirements at issue in this claim, noting that: "[e]very opacity and PM limit contained in the Permit, including the 50+ numeric limits that restrict PM emissions on a lb/hr or lb/MMBtu basis, is monitored by visual emissions monitoring in which emissions are observed during short periods either daily (for 4 units subject to CAM

[70] In addition, the Petitioners argue that EPA should deny the permit because ADEM's response was submitted in mid-September 2022, more than 90 days following the April 2022 order, and is thus untimely. Petition at 88. This is not presented as a basis for objection, but as a separate reason why EPA should deny the permit under 505(c). EPA need not resolve any requests for EPA to "issue or deny" the permit under 505(c) in responding to this petition requesting EPA's objection under 505(b)(2). Although the state's response to EPA's objection was not provided within 90 days, it was eventually provided, so this issue is moot. The lack of a timely response to EPA's objection might provide a basis for EPA to issue or deny a permit if the state never issues a response, but here, the permit has already been issued, so the requested relief (EPA issuing the permit) would not be appropriate.

requirements) or twice a week (for all other units)." *Id.* at 89. The Petitioners also note that the UOP Final Permit lacks any monitoring for SO_2 emissions. *Id.* at 79.

Although the Petitioners acknowledge that ADEM's responses explained that daily or twice weekly visual monitoring would ensure proper maintenance and function of control equipment, they criticize this explanation for not correlating "this type of monitoring to hourly emission limits." *Id.* at 90 (citing UOP Updated RTC at 2). The Petitioners reject ADEM's reasoning that continuous monitoring is impractical because it would involve monitoring during periods of non-operation for certain emission units. *Id.* The Petitioners claim this explanation does not excuse the need to monitor during all periods of operation, and that the permit could stipulate monitoring was not required during periods of non-operation. *Id.* at 90-91 (citing UOP Updated RTC at 7).

The Petitioners also reject ADEM's reasoning that the potential emissions from each individual emission unit are very low, arguing that there are many such units, their cumulative emissions are substantial, and the synthetic minor limits that allow the source to avoid PSD permitting must be enforceable. *Id.* The Petitioners argue that infrequent monitoring coupled with a requirement to only report deviations observed in such monitoring renders permit terms unenforceable. *Id.* at 91.

Finally, the Petitioners claim that the UOP Final Permit requires the use of EPA Method 6 to demonstrate compliance with SO_2 limits, but does not specify which of several potentially applicable tests within Method 6 applies to which of the many emission units the various tests could apply. *Id.* at 91–92. The Petitioners also claim that ADEM failed to respond to comments on this issue. *Id.* at 92.

EPA's Response: For the following reasons, EPA denies the Petitioners' request for an objection on this claim.

In the *UOP Order*, EPA directed ADEM as follows:

> ADEM must adequately respond to the significant comments regarding the monitoring, recordkeeping, and reporting for the opacity, PM, and SO_2 limits in the permit. ADEM should modify the permit record and respond to public comments regarding the justification in the record for the monitoring, recordkeeping, and reporting for the opacity, PM, and SO_2 limits. If the 2003 permit record contains some justification for the monitoring, recordkeeping, and reporting, ADEM should specifically cite to those portions of the record, including page numbers, when responding to the significant comments.
>
> In the process of developing and properly referencing a justification for the monitoring, recordkeeping, and reporting, if ADEM determines that additional monitoring, recordkeeping, and reporting is necessary to assure compliance with hourly emission limits, then ADEM should modify the permit as necessary. For example, if the permit currently only contains twice per week opacity observations for an hourly opacity limit, ADEM should consider whether additional direct or

> parametric monitoring, such as hourly parametric monitoring of a control device or hourly records of fuel flow, would be necessary to assure ongoing compliance with the hourly limit.

UOP Order at 11.

In responding to EPA's objection, ADEM did not add additional monitoring to the UOP Final Permit itself, but rather modified the permit record to respond to public comments and justify the monitoring, recordkeeping, and reporting requirements already in the permit. ADEM generally categorized the emission units at issue into three groups: natural gas-fired combustion units (subject to emission limits on PM and SO_2), material handling units that rely on control devices to limit emissions (subject to limits on opacity and PM, in some cases achieved through product throughput limits), and material handling units subject to CAM (for limits on PM that rely on control devices). *See* UOP Updated RTC at 2, 6–7. ADEM's updated responses explained the purpose of, and justification for, the monitoring requirements in the permit, referring to details added in the UOP Updated SOB for each unit (*e.g.*, references to NSR permits, engineering analyses, details on PTE calculations, *etc.*). *See id.* ADEM's justifications for the monitoring for these three categories of units are similar but involve distinct facts in each case. The Petition does not distinguish between these categories, but challenges all of ADEM's justifications as inadequate on the same grounds.

Determining whether monitoring is adequate in a particular circumstance is generally a context-specific determination made on a case-by-case basis. *CITGO Order* at 7. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5). A petitioner challenging monitoring requirements must address the permitting authority's rationale and explain why the requirements are inadequate in spite of that rationale. 40 C.F.R. § 70.12(a)(2)(iii), (vi).[71] EPA has described five factors permitting authorities may consider as a starting point in determining appropriate monitoring for a particular facility:

> (1) the variability of emissions from the unit in question; (2) the likelihood of a violation of the requirements; (3) whether add-on controls are being used for the unit to meet the emission limit; (4) the type of monitoring, process, maintenance, or control equipment data already available for the emission unit; and (5) the type and frequency of the monitoring requirements for similar emission units at other facilities.

CITGO Order at 7–8.

ADEM's justifications address the first four of these factors in some fashion.

Regarding emissions variability, ADEM states that the combustion units "are capable of firing only natural gas," implying very low variability of emissions. UOP updated RTC at 6. For the material handling units, ADEM argues that the devices controlling PM operate "in a consistent manner with little variability." UOP updated RTC at 2. ADEM also highlights General Provisos 16 & 15, which require the facility to maintain and properly operate control devices at all times, and to notify ADEM in the event of any breakdown of that equipment. *Id.* at 2, 6. The Petitioners

[71] *See supra* notes 6–9 and accompanying text.

do not challenge the low variability of emissions from the burning of natural gas or the consistency of the control devices.

Regarding the likelihood of violation, ADEM compares the potential emissions from each combustion unit with that unit's requested limit. In each case, ADEM shows how it determined that the facility would be capable of meeting the requested limit based on low PTE (due to the combustion of natural gas) in comparison to the limit. For example, ADEM shows that the requested PM limit for Boiler 8020 is 3.4 lb/hr and its PTE was calculated as 0.10 lb/hr (or 2.9% of the limit). *See* UOP Updated SOB at 3–4. ADEM shows that the requested SO_2 limit for every combustion unit is 9.0 lb/hr, and PTE was calculated as 0.02 lb/hr (or 0.22% of the limit). *See e.g., id.*

ADEM provides similar calculations for the material handling units, comparing varying emission rates and limits. ADEM shows that the calculated controlled PTE is similarly considerably lower than the requested limit in each case. For example, the PM synthetic minor limit for the baghouse on bulk bag unloading system (EP-138) is 0.3 lb/hr and its PTE was calculated as 0.00709 lb/hr (or 2.4% of the limit). *Id.* at 6–7. ADEM presents extensive, relevant details about these calculations (*e.g.*, emission factors, hours of operation, loading rates, control efficiencies of control devices, and throughput limits on material in some cases, *etc.*) and references the engineering analyses from the construction permits where the limits were established.
The Petitioners' sole challenge related to PTE concerns ADEM's use of AP-42 emission factors, which the Petitioners claim underestimate emissions. The Petitioners, however, do not analyze any specific PTE calculation corresponding to any specific unit, to show why AP-42 emission factors were inappropriate in any specific case. The Petitioners do not provide PTE calculations of their own, nor do they state to what degree they believe AP-42 factors underestimate emissions. Therefore, given the wide compliance margins that ADEM has shown between calculated PTE and the limits at issue, the Petitioners' general criticism of the use of AP-42 factors has not demonstrated that any unit is even capable of exceeding its limit, much less that it would be likely to exceed the limit. The Petitioners do not refute or address any of the other details relevant to calculating PTE in the Updated SOB or the referenced construction permits.

Regarding, add-on controls, ADEM describes the devices used to control PM at several units, noting their high control efficiency, *e.g.*, "99.9% PM removal efficiency based on the manufacturer's guarantee" for baghouse 23220. *Id.* at 12. ADEM also references the CAM plan included as an appendix to the permit that is meant to assure compliance with limits on four specific units in accordance with 40 C.F.R. § 64.3(b)(4)(iii). *See* UOP Updated RTC at 6. The Petitioners do not challenge the efficiency or reliability of the control devices. The Petitioners do not address the CAM plan.

Regarding available data, ADEM notes that over the last 10 years, "no formal enforcement action has been necessary regarding opacity or any other issues." *Id.* at 2. The Petitioners do not challenge the UOP facility's compliance record.

In general, the Petitioners have not addressed ADEM's reasoning justifying the monitoring, recordkeeping, and reporting requirements associated with the opacity, PM, and SO_2 limits in the UOP Final Permit. 40 C.F.R. § 70.12(a)(2)(vi). Instead, the Petitioners focus narrowly on the

frequency of visual emission checks, reiterating their claims from their prior petition that these checks do not match the hourly nature of the limits. Specifically, the Petitioners have not engaged with the content of ADEM's response in respect to the '*CITGO*' factors enumerated above, which explain why ADEM considers the current requirements sufficient to assure compliance. Although ADEM provided extensive details on each emission unit at issue, the Petitioners present no detail on any specific limit or emission unit, nor are the Petitioners' arguments universally applicable. 40 C.F.R. § 70.12(a)(2)(i), (iii). The Petitioners' argument that these units have "a cumulative impact on the overall PM emissions from the facility" even though each individual unit's emissions are small, Petition at 91, has no bearing on the enforceability of or adequacy of monitoring supporting each individual limit. Therefore, the Petitioners have not demonstrated that the monitoring, recordkeeping, and reporting requirements for any unit are insufficient to assure compliance with that unit's limits.

With regard to the Petitioners' claim concerning test Method 6 to demonstrate compliance with SO_2 limits, EPA denies this claim. The combustion units are not actually subject to any monitoring in the permit for SO_2, due to the low rate of emissions expected.[72] The Petitioners have not demonstrated that this justification for the lack of monitoring is inadequate. As previously explained, the Petitioners do not explain how the combustion units might exceed any of their SO_2 limits given the information ADEM has provided. Therefore, it is unclear why more specificity is necessary for a test method that is not actually required in the permit.

V. CONCLUSION

For the reasons set forth in this Order and pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), I hereby grant in part and deny in part the Petition as described in this Order.

Dated: SEP 1 8 2023

Michael S. Regan
Administrator

[72] The Petitioners themselves acknowledge that the UOP Final Permit does not require SO_2 emissions monitoring. Petition at 79.